



**APPEARANCES: (CONTINUED)**

**For Defendants:** SHEPPARD MULLIN RICHTER & HAMPTON LLP  
333 S. Hope Street  
43rd Floor  
Los Angeles, California 90017

**BY: TRACEY A. KENNEDY, ESQ.**

SHEPPARD MULLIN RICHTER & HAMPTON, LLP  
379 Lytton Ave  
Palo Alto, California 94301

**BY: PATRICIA M. JENG, ESQ.**

SHEPPARD MULLIN RICHTER & HAMPTON LLP  
Four Embarcadero Center  
17th Floor  
San Francisco, California 94111

**BY: SUSAN Q. HAINES, ESQ.**

**Also Present:** JOSEPH ALM, ESQ.  
- Tesla, Inc.

YUSUF MOHAMED, ESQ.  
- Tesla, Inc.

VALERIE CAPERS WORKMAN  
- Tesla, Inc.

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Monday - September 27, 2021

8:02 A.m.

P R O C E E D I N G S

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(Proceedings held in open court, outside  
the presence and hearing of the jury.)

**THE COURT:** Good morning, everybody. Be seated.

All right. So there are a couple of things that were  
filed with the McGinn. I didn't see anything from the defense  
on McGinn, so I'm assuming that you are in agreement that those  
depositions -- that those objections should be overruled.

**MS. KENNEDY:** Yes, Your Honor. I believe that is  
correct.

**THE COURT:** Okay. So I'm going to overrule the  
objections to designations 6 and 13.

The next thing is the Nigel Jones motion. Why is that  
coming 19 months after I ruled?

**MR. ORGAN:** Your Honor, I think when you ruled, it  
was -- it was unclear to us whether or not we were going to be  
able to use him in the case-in-chief or not, and that's the  
issue because he did -- he was at the factory at the time that  
Owen Diaz was there.

**THE COURT:** Mr. Organ --

**MR. ORGAN:** He worked in the -- yes, Your Honor.

**THE COURT:** -- did you look at the order that I made  
with respect to Mr. Jones?

1           **MR. ORGAN:** Yes, I did, Your Honor.

2           **THE COURT:** Given the absence of any overlap with  
3 Diaz's work, work areas, or supervisors, this testimony is not  
4 relevant to Diaz's case-in-chief.

5           As noted above, it could become relevant if Tesla relies  
6 on the Faragher-Ellerth defense. That determination will be  
7 determined at trial.

8           **MR. ORGAN:** Yes, Your Honor.

9           **THE COURT:** So if it's coming in, it's coming in in  
10 rebuttal.

11          **MR. ORGAN:** Yes, Your Honor.

12          **THE COURT:** Okay?

13          **MR. ORGAN:** I understand. Thank you.

14          **THE COURT:** You filled in zero gaps that I identified  
15 with respect to Mr. Jones' testimony. Was he deposed in this  
16 case?

17          **MR. ORGAN:** No. He's been a witness in two  
18 arbitrations. Defendant has cross-examined him twice.

19          **THE COURT:** All right. Well, so he's not testifying  
20 unless the situation changes with respect to what Tesla does  
21 with respect to his defense.

22          **MR. ORGAN:** Okay. Thank you, Your Honor.

23          **THE COURT:** And let me make this suggestion, that you  
24 spend your time working on your case and not trying the case in  
25 the papers. The lawyers need to focus on what happens in this

1 courtroom and not try to go out and try a case somewhere else.  
2 I don't want this case to be mistried.

3 So am I making myself clear?

4 **MR. ORGAN:** Yes, Your Honor.

5 **THE COURT:** Thank you.

6 All right. Is there anything else that we need to -- that  
7 needs to be taken up before the jury comes?

8 **MS. KENNEDY:** Your Honor, just one issue on mechanics  
9 with exhibits. Some of them have been stipulated to as being  
10 admitted, some have not; and I want to make sure -- I want to  
11 follow your procedure on the publishing and showing of  
12 exhibits. I know we've got technology here, and I am not  
13 proficient at that. So I want to make sure that we don't run  
14 afoul of publishing an exhibit to the jury before we are  
15 allowed to do so.

16 **THE COURT:** Right. So this technology allows the  
17 lawyers and me to see an exhibit when the jury does not. And  
18 no exhibit should be shown to the jury unless it's been  
19 admitted into evidence. And if there's a stipulation, great.  
20 Hopefully, you know exactly what you stipulated to. So that's  
21 how it works.

22 **MS. KENNEDY:** Okay. Thank you very much.

23 **THE COURT:** Okay.

24 **MR. ORGAN:** And, Your Honor, with respect to that,  
25 when you do admit an exhibit, do you want us to ask you prior

1 to publishing it to the jury, or once it's admitted can we do  
2 that?

3 **THE COURT:** Once it's admitted, it can be published.

4 **MR. ORGAN:** Okay. And then in terms of approaching  
5 the witness with their deposition transcripts, if we need to do  
6 that, what's your preference relative to that, Your Honor?

7 **THE COURT:** If you're going to do that, they should  
8 have the transcript up at the witness stand. If you don't have  
9 enough copies, then that's a problem and we'll have to deal  
10 with it; but I don't want you hovering over them and pointing  
11 to the page and line. They should be able to have that and  
12 look at it and then respond to you.

13 And I should have, obviously, the certified copy up here  
14 or some copy of it.

15 **MR. ORGAN:** Okay. Your Honor, I do have an issue with  
16 respect to Mr. Romero, who will be testifying second today.  
17 Mr. Kawasaki is testifying first.

18 We anticipate based on the time estimates his testimony  
19 will take approximately an hour and 15 minutes. Then  
20 Mr. Romero will be testifying for approximately probably an  
21 hour and a half, it looks like, based on our estimates.

22 But there are two exhibits that are impeachment exhibits,  
23 Your Honor. Those are exhibits that you reserved ruling on,  
24 and so I wanted to bring it to your attention because I don't  
25 want to be seen to be -- I don't want -- I don't want to go

1 against your rulings, but I do believe that they are direct  
2 impeachment and it's cumbersome because obviously I'm not sure  
3 how the Court wants me to do this because I don't want to give  
4 a heads-up to the witness, obviously. There should be at least  
5 some admonishment that defense counsel can't give him a  
6 heads-up about the exhibits.

7 So I've got the parts of the testimony flagged,  
8 Your Honor. I would be happy to have the Court read that ahead  
9 of time if you want; or if you want, I can just do it at the  
10 time.

11 **THE COURT:** Just do it -- I need the deposition. I  
12 need -- if there's -- if there are documents that are related  
13 to the testimony, I need to have those. I don't at the moment  
14 have any documents at all up here. So I need -- and then we'll  
15 look at it and deal with it at the time.

16 **MR. ORGAN:** Okay. I just didn't want to think -- make  
17 the Court think that I was trying to pull a fast one. I wanted  
18 to make sure I was at least previewing this because I do know  
19 this is a sensitive area, and so --

20 **THE COURT:** So, Mr. Organ, I have no idea what you're  
21 talking about.

22 **MR. ORGAN:** No, I understand that, Your Honor.

23 **THE COURT:** So I don't know what you're expecting from  
24 me, but I appreciate the fact that there may be some issues  
25 that come up during Romero. That's what I understand at the

1 moment.

2 **MR. ORGAN:** Yes, Your Honor.

3 **THE COURT:** Thank you for that.

4 **MR. ORGAN:** Okay.

5 **DEFENSE COUNSEL:** Your Honor, there is one final issue  
6 that would make this a little easier.

7 If -- we have the depositions electronically, and we also  
8 have them in hard copy. If we want to read a portion of the  
9 deposition, we could have the witness have a copy. We can also  
10 put it on the witness's screen, if that's -- and everyone  
11 else's screen, if that is amenable, assuming that there's no  
12 objection to that.

13 **THE COURT:** You know, as long as it's something that  
14 is either proper cross-examination or admissible. The thing  
15 that I don't want for the witness is to be given a snippet of  
16 testimony and not be able to look at the context of what was  
17 said.

18 **MS. KENNEDY:** Certainly. Absolutely, Your Honor.  
19 That's fine.

20 I have nothing else, Your Honor.

21 **THE COURT:** Okay. Anything else?

22 **MR. ORGAN:** Last thing, Your Honor. We had talked  
23 Friday, I think, about at the beginning of the day advising you  
24 if we thought we were taking a witness under 611(c).  
25 Mr. Romero I believe would be that. He was the plaintiff's



1 supervisor, and so we believe we can take him under 611(c),  
2 Your Honor.

3 **THE COURT:** Okay. Is there any objection to that,  
4 Ms. Kennedy?

5 **MS. KENNEDY:** Yes, that's fine.

6 **THE COURT:** It's okay. So there's no objection?

7 **MS. KENNEDY:** No objection.

8 **THE COURT:** Okay.

9 All right. Anything else?

10 (No response.)

11 **THE COURT:** We look forward to seeing you here at 8:30  
12 when the jury is here.

13 (Whereupon there was a recess in the proceedings  
14 from 8:11 a.m. until 9:01 a.m.)

15 (Jury enters the courtroom at 9:02 a.m.)

16 **THE COURT:** All right. Please be seated everybody.

17 Good morning, ladies and gentlemen of the jury. Welcome.  
18 Thank you for being here right at the start of this trial.

19 So what's going to happen this morning is I'm going to  
20 give you some preliminary injunctions to help you think about  
21 how the -- how to think about the evidence that comes before  
22 you, and then the parties will give their opening statements  
23 and we'll get going.

24 So you are the jury in this case, and Ms. Davis is going  
25 to put the Jury Instructions on the screen so that you can

## PRELIMINARY JURY INSTRUCTIONS

1 follow along.

2           **THE COURT:** It's my duty to instruct you on the law.  
3 It's your duty to find the facts from all the evidence in the  
4 case. To those facts you'll apply the law that I give you.  
5 You must follow the law as I give it to you whether you agree  
6 with it or not. And you must not be influenced by any personal  
7 likes or dislikes, opinions, prejudices, or sympathy. That  
8 means you have to decide the case solely on the evidence before  
9 you. You'll recall that you took an oath on Friday to do so.

10           At the end of the trial I'll give you my final  
11 instructions. It's the final instructions that will govern  
12 your duties.

13           Please don't read into these instructions or anything I  
14 may say or do that I have an opinion regarding the evidence or  
15 what your verdict should be.

16           To help you follow the evidence I'll give you a brief  
17 summary of the positions of the parties.

18           Plaintiff Owen Diaz claims that while working at the Tesla  
19 factory in Fremont, California, he was subjected to a hostile  
20 work environment based on his race, being African-American or  
21 black.

22           In addition, Mr. Diaz claims that Tesla, Inc., failed to  
23 take all reasonable steps to prevent race-based harassment  
24 towards him, including use of the "N" word, and failed to  
25 adequately remedy the harassment after Tesla received notice of

**PRELIMINARY JURY INSTRUCTIONS**

1 it.

2 Mr. Diaz also claims that Tesla, Inc., negligently  
3 retained factory workers and supervisors who engaged in  
4 harassing conduct towards him.

5 The plaintiff Owen Diaz has the burden of proving these  
6 claims by a preponderance of the evidence.

7 The defendant Tesla, Inc., doing business as Tesla Motors,  
8 Inc., denies these claims. Tesla denies that Mr. Diaz was  
9 subjected to a hostile work environment based on his race and  
10 denies that it failed to take all reasonable steps to prevent  
11 race-based harassment in the workplace.

12 Tesla also denies that it negligently hired, retained, or  
13 supervised factory workers, employees, or contractors who  
14 Mr. Diaz claims engaged in race-based harassing conduct towards  
15 him.

16 When a party has the burden of proving any claim or  
17 affirmative defense by a preponderance of the evidence, it  
18 means you must be persuaded by the evidence that the claim or  
19 affirmative defense is probably more true than not true. You  
20 should base your decision on all of the evidence regardless of  
21 which party presented it.

22 The evidence you are to consider in deciding what the  
23 facts are consists of the sworn testimony of any witness, the  
24 exhibits that are admitted into evidence, any facts to which  
25 the lawyers have agreed, and any facts that I may instruct you

**PRELIMINARY JURY INSTRUCTIONS**

1 to accept as proved.

2 In reaching your verdict, you may consider only the  
3 testimony and exhibits received into evidence. Certain things  
4 are not evidence, and you may not consider them in deciding  
5 what the facts are. I will list them for you.

6 Arguments and statements by lawyers are not evidence. I  
7 will repeat that. Arguments and statements by lawyers are not  
8 evidence. The lawyers are not witnesses. What they may say in  
9 their opening statements, closing arguments, and at other  
10 times, is intended to help you interpret the evidence. It is  
11 not evidence. If the facts as you remember them differ from  
12 the way the lawyers have stated them, your memory of them  
13 controls.

14 Questions and objections by lawyers are not evidence.  
15 Attorneys have a duty to their clients to object when they  
16 believe a question is improper under the Rules of Evidence.  
17 You should not be influenced by the objection or by the Court's  
18 ruling on it.

19 Testimony that's excluded or stricken or that you are  
20 instructed to disregard is not evidence and must not be  
21 considered.

22 In addition, some evidence may be received only for a  
23 limited purpose. When I instruct you to consider evidence only  
24 for a limited purpose, you must do so and you may not consider  
25 that evidence for any other purpose.

**PRELIMINARY JURY INSTRUCTIONS**

1 Anything you may see or hear when the court was not in  
2 session is not evidence. You are to decide the case solely on  
3 the evidence received at trial.

4 Some evidence may be admitted only for a limited purpose.  
5 When I instruct you that an item of evidence has been admitted  
6 only for a limited purpose, you must consider it only for that  
7 limited purpose and not for any other purpose.

8 Evidence may be direct or circumstantial. Direct evidence  
9 is direct proof of a fact, such as testimony by a witness about  
10 what that witness personally saw or heard or did.

11 Circumstantial evidence is proof of one or more facts from  
12 which you could find another fact. By way of example, if you  
13 make up in the morning and see that the sidewalk is wet, you  
14 may find from that fact that it rained during the night.

15 However, other evidence, such as a turned on garden hose, may  
16 provide a different explanation for the presence of water on  
17 the sidewalk. Therefore, before you decide that a fact has  
18 been proved by circumstantial evidence, you must consider all  
19 the evidence in light of reason, experience, and common sense.

20 You should consider both kinds of evidence. The law makes  
21 no distinction between the weight to be given to either direct  
22 or circumstantial evidence. It's for you to decide how much  
23 weight to give to any evidence.

24 There are Rules of Evidence that control what can be  
25 received into evidence. When a lawyer asks a question or

**PRELIMINARY JURY INSTRUCTIONS**

1 offers an exhibit into evidence and a lawyer on the other side  
2 thinks it's not permitted by the Rules of Evidence, that lawyer  
3 may object. If I overrule the objection, the question may be  
4 answered or the exhibit received. If I sustain the objection,  
5 the question cannot be answered, and the exhibit cannot be  
6 received. Whenever I sustain an objection to a question, you  
7 must ignore the question and must not guess what the answer  
8 might have been.

9 Sometimes I may order that evidence be stricken from the  
10 record and that you disregard or ignore that evidence. That  
11 means when you're deciding the case, you must not consider the  
12 stricken evidence for any purpose.

13 In deciding the facts in this case, you may have to decide  
14 which testimony to believe and which testimony not to believe.  
15 You may believe everything a witness says or part of it or none  
16 of it.

17 In considering the testimony of any witness, you may take  
18 into account:

19 The opportunity and ability of the witness to see or hear  
20 or know the things testified to;

21 The witness's memory;

22 The witness's manner while testifying;

23 The witness's interest in the outcome of the case, if any;

24 The witness's bias or prejudice, if any;

25 Whether other evidence contradicted the witness's

**PRELIMINARY JURY INSTRUCTIONS**

1 testimony.

2 The reasonableness of the witness's testimony in light of  
3 all the evidence;

4 And any other factors that bear on believability.

5 Sometimes a witness may say something that is not  
6 consistent with something else he or she said. Sometimes  
7 different witnesses will give different versions of what  
8 happened. People often forget things or make mistakes in what  
9 they remember. Also, two people may see the same event but  
10 remember it differently. You may consider these differences,  
11 but do not decide that testimony is untrue just because it  
12 differs from other testimony.

13 However, if you decide that a witness has deliberately  
14 testified untruthfully about something important, you may  
15 choose not to believe anything that witness said. On the other  
16 hand, if you think the witness testified untruthfully about  
17 some things but told the truth about others, you may accept the  
18 part you think is true and ignore the rest.

19 The weight of the evidence as to a fact does not  
20 necessarily depend on the number of witnesses who testify.  
21 What's important is how believable the witnesses were and how  
22 much weight you think their testimony deserves.

23 We all have feelings, assumptions, perceptions, fears, and  
24 stereotypes about others. Some biases we're aware of and  
25 others we may not be fully aware of, which is why they are

**PRELIMINARY JURY INSTRUCTIONS**

1 called implicit or unconscious biases. No matter how unbiased  
2 we think we are, our brains are hardwired to make unconscious  
3 decisions. We look at others and filter what they say through  
4 our own personal experience and background.

5 Because we all do this, we often see life and evaluate  
6 evidence in a way that tends to favor people who are like  
7 ourselves or who have had life experiences like our own.

8 We can also have biases about people like ourselves. One  
9 common example is the automatic association of male with career  
10 and female with family.

11 Bias can affect our thoughts, how we remember what we see  
12 and hear, whom we believe or disbelieve, and how we make  
13 important decisions.

14 As jurors, you're being asked to make an important  
15 decision in the case. You must, one, take the time you need to  
16 reflect carefully and thoughtfully about the evidence.

17 Two, think about why you're making the decision you're  
18 making and examine it for bias. Reconsider your first  
19 impressions of the people and the evidence in this case. If  
20 the people involved in this case were from different  
21 backgrounds, for example, richer or poorer, more or less  
22 educated, older or younger, or of a different gender, gender  
23 identity, race, religion or sexual orientation, would you still  
24 view them and the evidence in the same way?

25 Three, listen to one another. You must carefully evaluate



**PRELIMINARY JURY INSTRUCTIONS**

1 the evidence and resist, and help each other resist, any urge  
2 to reach a verdict influenced by bias for or against any party  
3 or witness.

4 Each of you have different backgrounds and will be viewing  
5 this case in light of your own insights, assumptions, and  
6 biases. Listening to different perspectives may help you to  
7 better identify the possible effects these hidden biases may  
8 have on decision-making.

9 And, four, resist jumping to conclusions based on personal  
10 likes or dislikes, generalizations, gut feelings, prejudices,  
11 sympathies, stereotypes, or unconscious biases.

12 The law demands that you make a fair decision based solely  
13 on the evidence, your individual evaluations of that evidence,  
14 your reason and common sense, and these instructions.

15 I'll now say a few words about your conduct as jurors.

16 First, keep an open mind throughout the trial and do not  
17 decide what the verdict should be until you and your fellow  
18 jurors have completed your deliberations at the end of the  
19 case.

20 Second, because you must decide this case based only on  
21 the evidence received in the case and on my instructions as to  
22 the law that applies, you must not be exposed to any other  
23 information about the case or to issues it involves during the  
24 course of your jury duty. Thus, until the end of the case or  
25 until I tell you otherwise:

**PRELIMINARY JURY INSTRUCTIONS**

1 Do not communicate with anyone in any way and do not let  
2 anyone else communicate with you in any way about the merits of  
3 the case or anything to do with it. This includes discussing  
4 the case in person, in writing, by phone, tablet or computer,  
5 or any electronic means, via email, text messaging, or any  
6 internet chat room, blog, website or application, including,  
7 but not limited to, Facebook, YouTube, Twitter, Instagram,  
8 LinkedIn, Snapchat, TikTok, or any other forms of social media.

9 This applies to communicating with your fellow jurors  
10 until I give you the case for deliberation. And it applies to  
11 communicating with everyone else, including your family  
12 members, your employer, the media or press, and the people  
13 involved in this trial, although you may notify your family and  
14 employer that you've been seated as a juror in this case and  
15 how long you expect the trial to last. But if you're asked or  
16 approached in any way about your jury service or anything about  
17 this case, you must respond that you have been ordered not to  
18 discuss the matter and report the contact to the Court.

19 Because you will receive all the evidence and legal  
20 instructions you properly may consider to return a verdict, do  
21 not read, watch, or listen to any news or media accounts or  
22 commentary about the case or anything to do with it. Do not do  
23 any research, such as consulting dictionaries, searching the  
24 internet, or using other reference materials.

25 And do not make any investigation or in any other way try

**PRELIMINARY JURY INSTRUCTIONS**

1 to learn about the case on your own. Do not visit or view any  
2 place discussed in this case, and do not use the internet or  
3 any other resource to search for or to view any place discussed  
4 during the trial.

5 Also, do not do any research about this case, the law, or  
6 the people involved, including the parties, the witnesses, or  
7 the lawyers, until you've been excused as jurors. If you  
8 happen to read or hear anything touching on this case in the  
9 media, turn away and report it to me as soon as possible.

10 These rules protect each party's right to have the case  
11 decided only on evidence that's been presented here in court.  
12 Witnesses here in court take an oath to tell the truth, and the  
13 accuracy of their testimony is tested through the trial  
14 process. If you do any research or investigation outside the  
15 courtroom or gain any information through improper  
16 communications, then your verdict may be influenced by  
17 inaccurate, incomplete, or misleading information that has not  
18 been tested by the trial process.

19 Each of the parties is entitled to a fair trial by an  
20 impartial jury, and if you decide the case based on information  
21 not presented in court, you will have denied the parties a fair  
22 trial. Remember, you have taken an oath to follow the rules,  
23 and it's very important that you follow these rules.

24 A juror who violates these restrictions jeopardizes the  
25 fairness of the proceedings and a mistrial could result that

**PRELIMINARY JURY INSTRUCTIONS**

1 would require the entire trial process to start over. If any  
2 juror is exposed to any outside information, please notify the  
3 Court immediately.

4 If there is any news media account or commentary about the  
5 case or anything to do with it, you must ignore it. You must  
6 not read, watch, or listen to any news media account or  
7 commentary about the case or anything to do with it. This case  
8 must be decided by you solely and exclusively on the evidence  
9 that will be received in this case and on my instructions as to  
10 the law that applies. If any juror is exposed to any outside  
11 information, please notify me immediately.

12 I urge you to pay close attention to the trial testimony  
13 as it's given. During deliberations, you will not have a  
14 transcript of the trial testimony.

15 If you wish, you may take notes to help you remember the  
16 evidence. If you do take notes, please keep them to yourself  
17 until you go to the jury room to decide the case. Do not let  
18 note taking distract you. When you leave, leave your notes  
19 behind in the jury room. No one will read your notes.

20 Whether or not you take notes, you should rely on your own  
21 memory of the evidence. Notes are only to assist your memory.  
22 You should not be overly influenced by your notes or those of  
23 other jurors.

24 From time to time during the trial it may become necessary  
25 for me to talk with the attorneys out of the hearing of the

## PRELIMINARY JURY INSTRUCTIONS

1 jury either by having a conference at the bench when the jury  
2 is present in the courtroom or by calling a recess. Please  
3 understand that while you're waiting, we're working. The  
4 purpose of these conferences is not to keep relevant  
5 information from you, but to decide how certain evidence is to  
6 be treated under the Rules of Evidence and to avoid confusion  
7 and error.

8 Of course, we will do what we can to keep the number and  
9 length of these conferences to a minimum. Minimum is zero.  
10 That's the number that I'm working towards in this trial.

11 I may not always grant an attorney's request for a  
12 conference. Do not consider my granting or denying a request  
13 for a conference as any indication of my opinion of the case or  
14 of what your verdict should be.

15 Trials proceed in the following way:

16 First, each side may make an opening statement. An  
17 opening statement is not evidence. It's simply an outline to  
18 help you understand what that party expects the evidence will  
19 show. A party is not required to make an opening statement.

20 The plaintiff will then present evidence, and counsel for  
21 the defendant may cross-examine. Then the defendant may  
22 present evidence and counsel for the plaintiff may  
23 cross-examine.

24 After the evidence has been presented, I will instruct you  
25 on the law that applies to this case, and the attorneys will

**OPENING STATEMENT / ALEXANDER**

1 make closing arguments.

2 And after that, you will go to the jury room to deliberate  
3 on your verdict.

4 So, ladies and gentlemen, those are the preliminary  
5 instructions for you. And now we'll proceed with the opening  
6 statements of the parties.

7 Mr. Alexander?

8 **MR. ALEXANDER:** Thank you, Your Honor.

9 **OPENING STATEMENT**

10 **MR. ALEXANDER:** If it please the Court, good morning.

11 Once again, my name is Bernard Alexander. This is Larry  
12 Organ, and this is Cimone Nunley. Collectively we represent  
13 Owen Diaz.

14 Everything I'm about to tell you is what the evidence will  
15 show.

16 This is a hostile work environment case based on race.  
17 Tesla will tell you that it has a zero tolerance policy for  
18 racial harassment inside the workplace, but the evidence will  
19 show exactly the opposite. It will show that Owen Diaz  
20 throughout the entire time he was working at Tesla was  
21 subjected to a hostile work environment based on race.

22 The "N" word was used repeatedly inside of the workplace.  
23 Not just by coworkers, but by supervisors, multiple  
24 supervisors. The "N" word was inside the bathrooms. It was  
25 scratched. It was painted. It was scrawled. He saw a

## OPENING STATEMENT / ALEXANDER

1 swastika inside the bathroom.

2 And it wasn't just words. It was physical intimidation  
3 and attacks. When people attacked him, they used racial slurs.  
4 They used the "N" word. And because Tesla failed to take  
5 direct and full responsibility for making sure that the  
6 workplace was free of racial harassment, it got worse.  
7 Employees were emboldened.

8 One day a supervisor drew a racial epithet, a drawing, and  
9 left it for Owen to find. Something that my mother called a  
10 jigaboo or a pickaninny, a racist drawing meant to demean  
11 African-Americans, something from the '40s and '50's in  
12 cartoons, where, before it was politically correct, they drew  
13 black people as having big lips and a bone in their hair and  
14 demeaning them and saying that African-Americans were not  
15 intelligent.

16 All of this conduct occurred because Tesla delegated  
17 responsibility for the workplace to staffing companies. And so  
18 as a consequence, the evidence will show that while Tesla  
19 claims that it has a zero tolerance policy, Tesla could not  
20 care less about the "N" word being used repeatedly inside of  
21 its workplace. It could not care less about making sure that  
22 employees are properly disciplined so that the conduct stops.  
23 It could not care less about making sure that black,  
24 African-American employees within its workplace feel safe and  
25 don't hear the "N" word or racial slurs.

## OPENING STATEMENT / ALEXANDER

1 Now, you are here and we are here because Owen Diaz was  
2 called a "nigger" repeatedly inside the workplace.

3 Out of respect for you, out of respect for me as a black  
4 man, out of respect for Owen as a black man, I will not repeat  
5 that word every time it was directed towards him; but you  
6 should know when I say the "N" word or "N," that is exactly  
7 what I'm referring to.

8 And I will not distinguish between N-I-G-G-E-R and  
9 N-I-G-G-A. Because this conduct, the use of these words did  
10 not occur in someone's backyard or in someone's living room or  
11 at a barbecue. It occurred inside the Tesla workplace. And  
12 there is no version of the "N" word that should be welcome or  
13 tolerated inside of a workplace, and we will prove that in this  
14 case.

15 So the evidence will show that as opposed to what Tesla  
16 says, that it is a zero tolerance policy, the evidence will  
17 show that it is a zero responsibility policy.

18 I'm going to talk to you now about how Tesla set up the  
19 workplace so that it could avoid liability and not take  
20 responsibility for the workplace.

21 Tesla has something called an Anti-Handbook Handbook. It  
22 is not the traditional --

23 Your Honor, if I could have the screen? Thank you.

24 (Brief pause.)

25 **MR. ALEXANDER:** Are we just delaying?



OPENING STATEMENT / ALEXANDER

1           **THE COURT:** We're seeing whether it's working.

2           **MR. ALEXANDER:** I can't tell whether it's our machine  
3 or --

4           **THE COURT:** I don't think it's you.

5           **MR. ALEXANDER:** Thank you, Your Honor.

6           **MR. ORGAN:** I brought them. We can put them on the  
7 Elmo.

8           **THE COURT:** Let's turn on the Elmo.

9           (Brief pause.)

10           **MR. ALEXANDER:** So Tesla has something called an  
11 Anti-Handbook Handbook. You will see it inside of evidence.  
12 It is not the typical handbook that you would expect to see  
13 inside the workplace. It goes through and does not describe  
14 the conduct that would violate its policy. Instead it refers  
15 to "stupid stuff."

16           This case, we are here in part with regard to "stupid  
17 stuff." And you will see when you see that Anti-Handbook  
18 Handbook, that it treats very serious conduct lightly. And  
19 you're going to find out based on the evidence that in real  
20 life Tesla treated serious conduct lightly.

21           One of the things that the Anti-Handbook Handbook does  
22 actually say is with regard to this "stupid stuff," harassing  
23 conduct and threatening conduct will not be tolerated and will  
24 be acted on.

25           Tesla also has an Anti-Harassment Policy, and inside that

## OPENING STATEMENT / ALEXANDER

1 Anti-Harassment Policy it says that -- Tesla says that with  
2 regard to an individual and a protected class of race, they  
3 will not be subjected to harassment. And with regard to  
4 harassment, sexual harassment, racial harassment, they will not  
5 be treated any differently. And with regard to harassment,  
6 with regard to use of cartoons or caricatures or things of that  
7 nature, drawings, that will not be tolerated.

8 And if an employee makes a report or the company becomes  
9 aware of this improper racially harassing conduct, it will  
10 conduct a prompt, thorough, and impartial investigation; and as  
11 a result of that investigation, they will take appropriate  
12 corrective action. That is the commitment that Tesla makes to  
13 all of its employees.

14 Now, Tesla has a factory that is 5.3 million square feet.  
15 Oracle stadium, where the Giants play, is 1.8 square feet. The  
16 Tesla factory in Fremont is three times larger than that  
17 stadium. Tesla stocks its factory with approximately  
18 10,000-plus employees. Primarily they're contract employees  
19 hired through staffing companies.

20 What Tesla does is it advertises for employees, and then  
21 contract employees are hired through the staffing companies,  
22 and then they work at the Tesla factory. And that is an  
23 artifice to put an entity, staffing companies, in between Tesla  
24 and the workplace so that it can attempt to avoid liability.

25 Now, with regard to Tesla, in order for employees to work

## OPENING STATEMENT / ALEXANDER

1 inside of the workplace, the employees have to go through a  
2 safety training. Tesla will not issue them a badge until  
3 they've gone through the safety training. Every employee,  
4 regardless of whether it's a contract employee or a direct  
5 Tesla employee, has to go through that training before they get  
6 a badge that will get them through the red doors that everybody  
7 goes through.

8 But with regard to those employees, while Tesla requires  
9 them to do the safety training, they do not receive training on  
10 the purported zero tolerance policy. With regard to the  
11 Anti-Handbook Handbook Tesla does not make sure that all those  
12 employees get the Anti-Handbook Handbook so that they know that  
13 Tesla does not allow discrimination in the workplace.

14 In terms of the Anti-Harassment Policy, Tesla does not  
15 make sure that all those employees receive the Anti-Harassment  
16 Policy so that they know that Tesla has a zero tolerance  
17 policy.

18 And with regard to the "N" word, they do not make sure  
19 that everyone knows that the "N" word is not welcome there.

20 To the contrary, you'll hear testimony from a manager at  
21 nextSource, Wayne Jackson, a manager who is responsible based  
22 on Tesla directing him to kind of supervise all of the other  
23 staffing companies. They have half a dozen staffing companies  
24 that Tesla used.

25 And Wayne Jackson will tell you -- Wayne Jackson is an

## OPENING STATEMENT / ALEXANDER

1 African-American man -- that he walked around the workplace and  
2 he heard the "N" word. And sometimes he'd say something about  
3 it to people, but he didn't do anything about it. He didn't  
4 report it to Tesla. He did not do anything because Tesla did  
5 not tell him that he should stop the "N" word from occurring  
6 inside the workplace.

7 You'll hear from another supervisor, Michael Wheeler, who  
8 also was subjected to racial discrimination inside the  
9 workplace, and he will tell you that Tesla did not put a  
10 priority on stopping the use of the "N" word inside the  
11 workplace.

12 And so as a consequence of Tesla hiring staffing companies  
13 to hire contract employees and as a consequence of having  
14 multiple staffing companies inside the workplace, there was a  
15 patchwork, a fragmented workplace in terms of -- in terms of  
16 the policies that applied.

17 So with regard to incidents that occurred, important  
18 incidents, serious incidents, a violation of the purported  
19 Tesla policy, the nextSource person would send out an email  
20 asking: What policy applies with regard to discrimination  
21 against -- I'm sorry, in your company? It was unclear what  
22 policy applied because Tesla did not make sure that there was a  
23 uniform policy that applied to all conduct, all violations, all  
24 racial harassment.

25 So with regard to employees -- so before employees went

## OPENING STATEMENT / ALEXANDER

1 inside of the workplace, they were hired by these staffing  
2 companies; but once they got inside the workplace, they were  
3 indistinguishable from anyone else. You could not tell the  
4 difference between a contract employee and a direct Tesla  
5 employee. They were all mixed in together, rowing together to  
6 do the same thing, to create Tesla cars.

7 And so regardless of the fact that Tesla tried to create  
8 this patchwork and put staffing companies between Tesla and its  
9 responsibility to its employees, the evidence will show that  
10 Tesla was responsible for everything that occurred inside of  
11 its workplace, regardless of the fact that they hired staffing  
12 companies to hire the contract employees that did the work.  
13 And you'll hear testimony that most of the employees inside of  
14 the workplace were contract employees, not direct employees.

15 So now I'm going to introduce you to Owen Diaz. Owen Diaz  
16 was born in 1968. He's 53 years old. He is a product of the  
17 Bay Area. He grew up in Oakland, went to Dewey High School,  
18 graduated from there. Went to trade school. At trade school  
19 he learned construction, how to deal with roofs.

20 Owen has a family. He's been married -- I believe he's  
21 been -- he's been with his wife for about 28 years and married  
22 for 20 years. He's got four kids; two boys, two girls.

23 Owen saw an advertisement to work at Tesla. He was on  
24 Indeed and there was an ad for Tesla there, and so he clicked  
25 on and he filled out information. And then instead of being

## OPENING STATEMENT / ALEXANDER

1 directed to Tesla, he was redirected to CitiStaff. That was  
2 the staffing company that ultimately hired him. And consistent  
3 with the policy, Owen had to receive safety training before he  
4 got the badge that would get him inside the door.

5 And Owen was trained to be an elevator operator. Now, he  
6 operated elevators inside the plant, carrying heavy equipment  
7 up and down between two floors. These were industrial  
8 elevators, industrial equipment. Before he could do any work,  
9 he had to be trained on how to run the elevator. Sophisticated  
10 switching.

11 So they trained him how to do that sophisticated  
12 switching. They trained him on how to use the equipment. He  
13 used forklifts and tuggers. He had to be certified on the  
14 elevator, certified on the forklifts, certified on all the  
15 equipment.

16 Tesla provided him with all the equipment that he used.  
17 Tesla determined how much his pay would be, what his hours  
18 were, whether he got to work overtime. When he got a  
19 promotion, Tesla decided that he'd get a promotion. Virtually  
20 everything that was important to his job, Tesla controlled it.

21 You're going to hear testimony from two of his  
22 supervisors, Tom Kawasaki, who will be the first witness, and  
23 Michael Wheeler, who you will hear at the end of the day. They  
24 will both tell you that Owen Diaz was a very good employee. In  
25 fact, after two months of being with the company, he was

## OPENING STATEMENT / ALEXANDER

1 promoted to a lead. And you'll see emails that refer to him as  
2 being discussed as being considered for a supervisor.

3 And the only time, the only time Owen ever had any issues  
4 inside the workplace is when people were using racial slurs and  
5 racially harassing him. All of the incidents associated with  
6 any performance issues are associated with that.

7 So now that I've told you about how Tesla structured the  
8 workplace and now that I've introduced you to a snippet of who  
9 Owen Diaz is, I want to talk to you about what he experienced  
10 inside the workplace that caused it to be a hostile work  
11 environment based on race.

12 **MS. KENNEDY:** Your Honor, this last incident,  
13 May 21st, is supposed to be off of the graphic --

14 **MR. ORGAN:** Oh, I apologize. That's the order. Let  
15 me pull that up.

16 **MS. KENNEDY:** -- per the Court's order.

17 **MR. ALEXANDER:** Because we don't have an electronic  
18 copy, the hard copy --

19 **THE COURT:** No, I understand.

20 **MR. ALEXANDER:** I apologize.

21 **MR. ORGAN:** I apologize, Your Honor.

22 **MR. ALEXANDER:** So Owen was hired in June of 2015.  
23 And in July of 2015, he found the "N" word scrawled, scratched,  
24 painted inside the bathroom, and at some point he saw a  
25 swastika in there. And he didn't report it the first day

## OPENING STATEMENT / ALEXANDER

1 because he didn't want to make waves right away, but he did  
2 report it to Ed Romero, a supervisor inside the workplace.

3 And nine months later, when he left the company in  
4 approximately May of 2016, that graffiti, that racist graffiti  
5 was still there. It had not been corrected.

6 **MS. KENNEDY:** Objection. That was part of the order,  
7 Your Honor.

8 **THE COURT:** So, ladies and gentlemen, what I want to  
9 remind you of at this point is that what you're hearing is not  
10 evidence. It is simply what the parties assume that the case  
11 is going to show.

12 I think Ms. Kennedy is correct with respect to her  
13 objection, and so you should disregard that for the moment.

14 And, Mr. Alexander, please proceed.

15 **MR. ALEXANDER:** Thank you.

16 And so with regard to that gravity that was --

17 (Interruption in the proceedings due to technical  
18 difficulties.)

19 **THE COURT:** So we're set with the court reporter.  
20 Let's see whether we can get the evidence presentation set up.

21 (Brief pause.)

22 **THE COURT:** So when I started practicing law, the way  
23 that we would demonstrate things is by flip charts and then  
24 you'd write something and flip the thing. It wasn't nearly as  
25 effective as what we have, but it always worked. You could



## OPENING STATEMENT / ALEXANDER

1 always change from one page to the next.

2 So my apologies for this, and I think we're ready to roll  
3 again.

4 **MR. ALEXANDER:** Thank you very much, Your Honor.

5 **THE COURT:** Go ahead, Mr. Alexander.

6 **MR. ALEXANDER:** It will not be the worst thing that  
7 happens to me ever.

8 **THE COURT:** No, or in this trial.

9 **MR. ALEXANDER:** Thanks.

10 So there is a person by the name of Judy Timbreza. And  
11 with regard to Judy Timbreza, an incident occurred associated  
12 with Owen Diaz. Mr. Timbreza worked inside the workplace,  
13 spoke Spanish. He used to come inside the elevator with his  
14 buddies and they would be laughing and joking and saying stuff,  
15 and they would laugh, and then they would look over at Owen,  
16 and this went on for weeks.

17 So after awhile Owen decided, "I'm going to figure out  
18 what they're saying. Why are they laughing and looking at me?"

19 And then he figured out what they were saying kind of and  
20 imitated inside of a Google Translate. And after he -- after  
21 he did that and found out what it said inside Google Translate,  
22 he found out that they were referring to him as a "porch  
23 monkey." They were using the word *mayate*, which is the  
24 "N" word in Spanish.

25 And ultimately Mr. Timbreza was bold enough to use the

## OPENING STATEMENT / ALEXANDER

1 "N" word in English. So one day Owen had had enough and there  
2 was a confrontation. And people, coworkers, were around and  
3 they called over the supervisor Tom Kawasaki, and Mr. Kawasaki  
4 showed up and separated people. And he looked at Owen and he  
5 asked Owen what happened? And Owen said Timbreza had used  
6 racial slurs towards him, had used the "N" word.

7 And Tom Kawasaki did what you would expect a supervisor to  
8 do. He conducted the beginnings of an investigation. He asked  
9 the coworkers what had happened, and they confirmed what Owen  
10 Diaz said; that he had -- that Timbreza had been using racial  
11 slurs.

12 And so Mr. Kawasaki did what you'd expect, what you would  
13 hope a supervisor would do. He passed the information up the  
14 line to a person named Romero. And Mr. Romero did something  
15 that would surprise you. He told Mr. Quintero, Victor  
16 Quintero, a manager at Tesla, that there had not been any  
17 confirmation of racial slurs. He lied about racial slurs being  
18 confirmed inside the workplace.

19 So as a consequence of that, instead of getting a written  
20 reprimand or a strong verbal warning or instead of the zero  
21 tolerance policy, he received a verbal reprimand for kidding  
22 around excessively.

23 The next thing that occurred inside the workplace is a  
24 person named Robert Hurtado having interactions with Owen.  
25 Robert Hurtado is a supervisor. He manages leads. He had the

## OPENING STATEMENT / ALEXANDER

1 ability to tell Owen what to do and how to do his job.

2 Mr. Hurtado for months throughout the entire time that  
3 Owen was there, beginning in approximately August of 2015,  
4 Hurtado used the "N" word, Owen will testify, at least 30  
5 times. And not just the "N" word. He would say: You "Ns" are  
6 lazy. "N," hurry up and push the button. And he would refer  
7 to Owen as "boy."

8 One day Owen had had enough and with regard to Mr. Hurtado  
9 he said: Look, don't talk to me any more. Don't talk to me  
10 about anything personal. Only talk about work.

11 Mr. Hurtado went to a person named dela Grande, a Tesla  
12 supervisor, and twisted the story. And so the way she said it  
13 was: The leads are very uncomfortable with Owen. And she  
14 reported that up the line to Victor Quintero, the Tesla  
15 manager. And his response, without any investigation, based on  
16 just that information, said: Well, let's find out what Owen  
17 has to say, but maybe we'll need to give him a final warning or  
18 maybe we need to terminate him.

19 That was the response, just because Owen refused to speak  
20 to his harasser except about work.

21 The next thing that occurred is with regard to a person by  
22 the name of Ramon Martinez. Ramon Martinez was also a  
23 supervisor. Ramon Martinez -- I apologize, I skipped over  
24 something.

25 So before I talk about Mr. Martinez, let me talk about

## OPENING STATEMENT / ALEXANDER

1 Owen's son. Owen has a son by the name of Demetri. And  
2 Demetri worked at a Tesla factory for about two months, from  
3 August of 2015 to October of 2015. And with regard to Demetri,  
4 he had heard a little bit about what his father has gone  
5 through, but not everything. And based on what little bit he  
6 knew, he was willing to work at the Tesla factory.

7 Tesla was advertising. Tesla was saying it was going to  
8 change the world, was making these wonderful cars, paying a  
9 good rate and paying a rate better than other locations he  
10 could find in the Bay Area, and so why wouldn't he want to get  
11 a job at Tesla.

12 And Owen, with regard to his son, was hopeful that because  
13 his son was going to work through a different staffing company,  
14 West Valley Group, and because his son was not going to work in  
15 the elevators but was going to work in the battery area, Owen  
16 was helpful that things would be better for his son inside the  
17 workplace.

18 One day Owen decided to walk over and bring his son lunch.  
19 And his son was inside the department with his other coworkers  
20 sitting there, and Owen arrived just in time to hear his son  
21 being called the "N" word by his supervisor by the name of  
22 Mr. Caballero.

23 So Owen's hope that things would be better for his son was  
24 dashed. It turns out that use of the "N" word was pervasive.  
25 It was everywhere that Owen went.

## OPENING STATEMENT / ALEXANDER

1           So now let's go back and talk about Ramon Martinez. So  
2           Ramon Martinez during the same time frame that Mr. Hurtado was  
3           using the "N" word and using racial epithets towards Owen,  
4           Ramon Martinez was also using racial epithets towards Owen. He  
5           would say: I hate you "Ns." I hate you fucking "Ns." "Ns"  
6           aren't shit." "I wish I could get all you "Ns" fired." "Go  
7           back to Africa." "Mayate."

8           This supervisor, Mr. Martinez, used those terms repeatedly  
9           when he came in contact with Owen Diaz.

10          One day Owen was training an employee, a new employee,  
11          Rothaij Foster, and he was going up and down the elevator and  
12          showing Rothaij, Mr. Foster, how to perform his job duties.  
13          And as he was going down and the doors were opening, he said  
14          something to the effect of: You're going to have a new  
15          supervisor now. The supervisor, Mr. Kawasaki, is leaving.

16          Now, when the doors opened, Ramon Martinez was sitting on  
17          a tugger. It's like a boat. It pulls heavy items. And for  
18          some reason Martinez was upset, and he jumped up and ran at  
19          Owen. And he ran at him, and his fists were out, and he was  
20          aggressive, and he was yelling, and he was using profanity,  
21          racial slurs, and he was using the "N" word.

22          And Owen backed up. And with this barrage he said: Look,  
23          there are cameras. There is video surveillance. You're being  
24          recorded. And in Owen's mind he thought that that was not just  
25          visual, that that was -- words, that the words were actually

## OPENING STATEMENT / ALEXANDER

1 being recorded as well.

2 And so Martinez hearing that backed up. Owen wrote an  
3 email, described the incident. He said: Look, look at the  
4 video. Look at the video to confirm this incident. He said:  
5 I feel uncomfortable with him now. In anticipation of it being  
6 reported, Ramon Martinez went and said that Owen was being  
7 unprofessional.

8 With regard to this incident, they investigated the  
9 unprofessional, but they did nothing to investigate Owen's  
10 version of the facts that it was a racial incident.

11 You will not see the video that was controlled by Tesla  
12 that shows Ramon Martinez rushing Owen. You will not see that  
13 video because Tesla did not take the time to look at the video  
14 or preserve the video so that you as jurors could see it.

15 There was a witness there, Mr. Foster. You will not hear  
16 a statement that was taken from him because they did not take a  
17 statement from the witness.

18 You will not see Owen's statement other than the email  
19 that he sent, because despite their claiming a zero tolerance  
20 policy, they did not engage in the investigation that they  
21 promised inside of their Anti-Handbook Handbook or inside their  
22 Anti-Harassment Policy.

23 Because Tesla did not take appropriate corrective  
24 action -- I'm sorry.

25 And so as a consequence, I should say, of that incident

## OPENING STATEMENT / ALEXANDER

1 and despite Owen saying that he did not feel safe, there was no  
2 verbal warning. There was just a verbal counseling to both of  
3 them, as though Owen being unprofessional was the same as the  
4 conduct of using racial slurs.

5 So let's -- so because Mr. Martinez was emboldened,  
6 because the conduct did not stop, because Tesla didn't take  
7 action, the next incident that occurred is Owen was inside the  
8 workplace. He walked away from his area for five minutes.  
9 When he came back, he found a drawing that had been left there  
10 by a supervisor. And he took a picture and he sent an email to  
11 Wayne Jackson, the African-American manager with nextSource.  
12 And he sent an email and got Michael Wheeler, another  
13 supervisor, to come over. And he brought over a person named  
14 Israel.

15 And so the four of them -- Wheeler, Wayne Jackson, and  
16 Owen, who are all African-American, and Israel -- they sat and  
17 they talked about it and stood there in front of this racist  
18 drawing.

19 And then for some reason someone summoned Ramon Martinez  
20 over to try and figure out who had written this. And then  
21 Ramon Martinez came over. And about 5 to 15 minutes passed,  
22 and then finally Ramon Martinez said: I drew this. And then  
23 he said something to the effect of: What? You people can't  
24 take a joke?

25 So as a consequence of that incident, there was something

## OPENING STATEMENT / ALEXANDER

1 of an investigation, but you will conclude that it was not the  
2 investigation that Tesla promised, and it did not comport with  
3 the law.

4 With regard to Owen, he sent a statement and said, once  
5 again, he did not feel safe inside the workplace.

6 He was interviewed by a person named Ms. Delgado, and she  
7 filled out a form. She had to get permission from CitiStaff in  
8 order to interview Owen. And with regard to that interview, it  
9 was brief. And you'll see the statement that was there, but  
10 with regard to Mr. Martinez, Mr. Martinez was never  
11 interviewed. Mr. Martinez got favored treatment. He wrote out  
12 his own statement.

13 And even after he provided the statement, no one  
14 interviewed him to find out whether the information he put  
15 inside the statement was true. And when you look at that  
16 statement, and we may process down to him, and Ms. Delgado, the  
17 person who should have interviewed him, you will see that there  
18 are a number of factual statements that must be false.

19 One of those statements is that Mr. Martinez apologized,  
20 but you'll hear testimony from the witnesses there that he did  
21 not apologize at the scene. And you'll hear information that  
22 there was no time in between when the incident occurred and  
23 when Mr. Martinez wrote his statement claiming to have  
24 apologized where he had any further interaction with Owen Diaz.  
25 And Owen will tell you that there is no point at which he



## OPENING STATEMENT / ALEXANDER

1 ever -- that Martinez ever apologized.

2 And so with regard to the zero tolerance policy, instead  
3 of -- you'll hear testimony from Wayne Jackson where he will  
4 say that he spoke to his manager, and they both agreed that --  
5 with regard to this incident, Wayne Jackson wanted to recommend  
6 termination. And Wayne Jackson's supervisor agreed that it  
7 should either be termination or serious reprimand. And so  
8 you'll hear testimony that Wayne Jackson told the person at  
9 Tesla it should be a termination.

10 But Mr. Quintero, the manager there, will say that when he  
11 first saw the picture, he thought it was a joke. He didn't  
12 realize it was serious. He had to be told that it was serious.

13 And initially when Wayne Jackson wanted to give severe --  
14 a termination, his reaction was: No, we should just give a  
15 verbal warning.

16 And so Wayne Jackson had to insist that it be something  
17 more, a suspension at least for three days. And so ultimately  
18 that's what occurred.

19 But I want you to pay close attention to the timing. This  
20 incident occurred on January 21, 2016. Owen worked the night  
21 shift. He worked between two shifts, from 6:00 at night until  
22 approximately 6:00 in the morning. And he couldn't stop  
23 because he had to do his job on the elevators, so he didn't  
24 write out this email until the next morning at about 8:42.

25 So he wrote out an email to management saying that this

## OPENING STATEMENT / ALEXANDER

1 incident occurred. And you're going to see inside of -- you're  
2 going to see that that date and the timing is very important to  
3 the investigation.

4 So as a consequence of this incident, Ramon Martinez did  
5 not get terminated. It was not a zero tolerance policy. And  
6 you're going to find out that Tesla cared so much about use of  
7 the "N" word, that with regard to Ramon Martinez, he was  
8 working for a staffing company before, he became a direct Tesla  
9 employee.

10 At the end of this case -- I'm sorry.

11 Before we get there, in February of 2016 Owen's mother  
12 passed away. And so he left the workplace because of that, and  
13 he went and he addressed the issues with regard to his mother,  
14 and then it came time for him to return to work at Tesla.

15 Now, there's some documentation that indicates that he  
16 came back for a day, and Owen does not recall actually coming  
17 back. But really the issue was he could not face coming back  
18 to a hostile work environment where he faced the "N" word  
19 constantly.

20 You're going to hear testimony from a person by the name  
21 of Erin Marconi. She is an HR director. She is going to come  
22 and tell you that any time people are faced with something that  
23 makes them uncomfortable in the workplace, you have to do  
24 something about it.

25 So one day inside the workplace -- so one day inside the

## OPENING STATEMENT / ALEXANDER

1 workplace something happened. You know how restrooms have a  
2 stick figure? They have a man and a woman. Someone drew  
3 breasts on the female figure. And because someone felt  
4 uncomfortable -- Ms. Marconi is going to tell you if anyone  
5 feels uncomfortable with conduct, then we have to do something  
6 about it. That's the way harassment should be treated inside  
7 the workplace.

8 So as a consequence of someone drawing breasts on this  
9 stick figure, 500 people went to training. 500 people at Tesla  
10 stopped what they were doing and went to training because this  
11 had occurred.

12 So with regard to a breast being placed on a stick figure,  
13 there was training. But with regard to the "N" word being used  
14 over and over and over inside the workplace, there is never a  
15 point that training occurred inside the workplace.

16 And so now with regard to Owen after his mother passed  
17 away, he had the opportunity to return to work, but he could  
18 not return to work because he could not face the "N" word any  
19 more. He could not face the emasculation of not being able to  
20 defend himself inside the workplace.

21 He could not take the inability to protect his son from  
22 the same conduct inside the workplace and the consequences that  
23 flowed to his son from those incidents, which he will testify  
24 to during his examination.

25 He will testify, and we will ask you for damages for --

**OPENING STATEMENT / KENNEDY**

1 substantial damages for emotional distress based on the harm  
2 that he suffered associated with the harm to his marriage from  
3 what occurred inside the workplace.

4 You will hear testimony from a psychologist,  
5 Anthony Reading, who will explain to you the diagnosis that  
6 occurs when someone is subjected to discrimination inside the  
7 workplace because of their skin color, because of something  
8 they cannot control.

9 But you will not have to just rely on that diagnosis. The  
10 testimony from Owen Diaz, from his testimony you will know that  
11 he suffered substantial emotional distress, and we will ask you  
12 for substantial damages for that.

13 But at the end of the case we'll also ask you for  
14 substantial punitive damages, punitive damages for Tesla  
15 refusing to take responsibility for its workplace, refusing to  
16 assure that the "N" word did not occur repeatedly inside the  
17 workplace. We'll ask you for substantial punitive damages so  
18 that other companies will know and so that Tesla will know that  
19 Tesla is not above the law.

20 Tesla will say that it's a zero tolerance policy, but you  
21 will find that it's a zero responsibility policy.

22 Thank you.

23 **THE COURT:** All right. Ms. Kennedy.

24 **OPENING STATEMENT**

25 **MS. KENNEDY:** May it please the Court.

## OPENING STATEMENT / KENNEDY

1           **THE COURT:** Please.

2           **MS. KENNEDY:** Good morning, ladies and gentlemen of  
3 the jury.

4           May it please the Court, my name is Tracey Kennedy, and  
5 I'm one of the attorneys representing Tesla, Inc. in this  
6 matter.

7           I'm going to introduce you to our trial team and our  
8 client representative. It's Valerie Capers Workman. She is  
9 the Vice-President People and Human Resources.

10          You already met Yusuf Mohamed, who is the Deputy General  
11 Counsel of Tesla, as well as Joseph Alm, Senior Counsel.

12          And my trial team is -- my co-counsel is Patricia Jeng,  
13 Susan Haines, and my trustee trial tech is Stephanie Limbaugh.  
14 We are the legal team representing Tesla in this case.

15          Let me just first start off by saying a couple things what  
16 this case is about and tell you what it's not about.

17          The first thing it is not about is Tesla by any means  
18 tolerating racial harassment in the workplace. It's not about  
19 Tesla not taking responsibility for racial harassment in the  
20 workplace. And it's not about Tesla being an organization  
21 that's going to say: You know what? It is simply okay for  
22 people to be racially harassed in the workplace. That is not  
23 what this case is about.

24          What this case is about is about Owen Diaz. First and  
25 foremost, Owen Diaz was never a Tesla employee at all. He was

## OPENING STATEMENT / KENNEDY

1 always an employee of CitiStaff and by extension nextSource.

2 This is also a case where there is no evidence that any  
3 Tesla employee at any point in time engaged in any of the  
4 conduct that Mr. Diaz is now testifying about and now talking  
5 about after his employment with CitiStaff ended in about May of  
6 2016.

7 This is not a case where at any point in time when  
8 Mr. Diaz was working for CitiStaff and making complaints in  
9 writing about a myriad of things, at no point in time did  
10 Mr. Diaz at any time complain about everything, put in writing  
11 any of these horrible words, these racial words that he is here  
12 suing on.

13 At no point in time will the evidence show that Mr. Diaz  
14 wrote to anyone at CitiStaff, nextSource, Chartwell, anyone at  
15 Tesla, anything in writing about, quote, "awful" words, the  
16 "N" word, the "porch monkey," "mayate," any of these words.

17 The evidence is going to show at the time Mr. Diaz was  
18 working for CitiStaff as an elevator operator or a lead  
19 elevator operator. He had issues with coworkers. Coworkers  
20 had issues with him. And when he did complain -- and I'll show  
21 you the couple times -- the matter was resolved, people were  
22 let go, people were transferred, it was handled, and it was  
23 investigated.

24 So what this case is about and what the real story is is a  
25 different story than what you've been told. And the evidence

## OPENING STATEMENT / KENNEDY

1 is going to show there is another side of the story here, and  
2 that side of the story is very different. And the side of the  
3 story is very different because what happened during Mr. Diaz's  
4 nine-and-a-half-month assignment at the Fremont Tesla facility  
5 became a different story after he left.

6 The testimony is also going to be at no point in time was  
7 Tesla put on notice to take responsibility for this myriad of  
8 racial slurs that, according to Mr. Diaz's testimony after he  
9 hired a lawyer, was that this was happening on a daily basis;  
10 20, 30, 40, 50 times, every day, a myriad of people calling him  
11 all these names.

12 So why are we here and what is this case really about?  
13 The case is about Owen Diaz vs. Tesla. Owen Diaz was never an  
14 employee of Tesla. The evidence is going to show he applied  
15 through CitiStaff. He was paid by CitiStaff. And we'll go  
16 through all of that.

17 The evidence is also going to show that the Tesla Fremont  
18 facility, it is a large facility, and there were many different  
19 staffing agencies that were used to staff up that facility.  
20 And you're going to see the relationship here. You'll see when  
21 you look at this, it's going to be -- you'll see people from  
22 nextSource, which is sort of the umbrella staffing agency.  
23 There was CitiStaff. That was Mr. Diaz's employer. There was  
24 Chartwell Staffing Solutions, was some of the other people  
25 you're going to see testify. There was West Valley Staffing

## OPENING STATEMENT / KENNEDY

1 Group, which was the staffing group that hired Mr. Diaz's son,  
2 Demetric Di-az, to come work in the battery area.

3 And it's going to be importing because one of the things  
4 you're going to be asked, and the evidence is going to ask you  
5 to look at this, is to determine whether or not Tesla, not  
6 these staffing agencies, Tesla, is responsible for the racial  
7 harassment. The evidence is going to show that not one Tesla  
8 employee engaged in this harassment by Mr. Diaz.

9 So let's take a look at this Tesla facility. It is a very  
10 large facility, 5.3 million square feet, and this is where they  
11 make Tesla cars.

12 Mr. Diaz's job, when he was hired, was as an elevator  
13 operator. This is in a factory. This is not a people-mover  
14 elevator. This is a large elevator. Usually two elevator  
15 operators per shift depending on the shipment. And basically  
16 his job was to make sure that material was obtained, put into  
17 the elevator, and moved from the second floor to the first  
18 floor. That material could be boxes, recycling, crates,  
19 material.

20 And it's very important for the elevator operator, whoever  
21 that person is, to work with the employees at the facility to  
22 make sure production doesn't go down, to make sure recycling  
23 can get out. Because basically this is how you transport that  
24 material up and down in the elevator in the factory.

25 It also required Mr. Diaz and other elevator operators to



## OPENING STATEMENT / KENNEDY

1 use a forklift and to move material. So that was the job.

2 It's a customer service job inside the factory. You've got to  
3 work with people, with production and material to make sure  
4 things keep flowing.

5 At this Tesla facility in the 2015-2016 time period, which  
6 is only the time period we're talking about -- just so you  
7 understand it, Mr. Diaz started working through CitiStaff in  
8 June of 2015. His last day actually working at the facility  
9 was approximately March 3rd or 4th of 2016. So approximately  
10 nine and a half months.

11 And during that time in the facility working 24/7 there  
12 are about 10,000 workers. Some are Tesla employees. Some are  
13 staffing employees. And the evidence is also going to show  
14 that everyone in the facility knew who everyone was because  
15 they have a badge, and the badge says "Contractor." So you  
16 know who are the contractors and you know who the Tesla  
17 employees are.

18 So the evidence is going to show that there was a  
19 different story here. There is a real story that's been going  
20 on here. It's a very different story from what Mr. Diaz is  
21 going to tell you.

22 And at the end of this case the judge is going to provide  
23 more Jury Instructions and a verdict form, and you're going to  
24 be asked to decide based on the evidence what really happened  
25 at the time in 2015 and 2016, who said what, who said anything,

## OPENING STATEMENT / KENNEDY

1 whether the story is true, whether the evidence is what it is,  
2 and that also whether or not Mr. Diaz proved his case by a  
3 preponderance of the evidence as to Tesla.

4 So who are some people that you're going to see? I'm  
5 going to give you a chart here of some of the folks that you're  
6 going to see. It's important to know who is who because  
7 despite the fact that there are several staffing agencies  
8 involved, this case is about Owen Diaz against Tesla, his  
9 non-employer.

10 The evidence is also going to show from Mr. Diaz's own  
11 testimony that at no point in time did he ever report any of  
12 this alleged racial harassment to anyone at his employer,  
13 CitiStaff.

14 So let's take a look at some of these folks, some of these  
15 names, to get an idea of who is going to be coming to testify.

16 We look at first Owen Diaz. He worked for CitiStaff. He  
17 worked for nextSource. That's what his -- that was his  
18 employer. He was an elevator operator. And about three weeks  
19 or so into it, by all accounts according to his employer,  
20 nextSource and CitiStaff, he was doing a good job as an  
21 elevator operator. He was made a lead elevator operator  
22 shortly into it. He became a lead, like some of these other  
23 people you're going to see.

24 Ramon Martinez, you're going to hear testimony from him  
25 probably on Thursday or Friday of this week. Ramon Martinez is

## OPENING STATEMENT / KENNEDY

1 going to testify about all of his interactions with Mr. Diaz,  
2 and they are -- they are the polar opposite of what Mr. Diaz  
3 has testified to.

4 Mr. Ramon Diaz [sic] was not a supervisor. He was another  
5 lead, and he worked for Chartwell and nextSource. He was a  
6 material handler at best. He was not Mr. Diaz's supervisor at  
7 any point in time.

8 You're also going to hear from the first witness, Mr. Tom  
9 Kawasaki. He worked for Chartwell. He was an elevator lead.

10 You'll hear some other people. Edward Romero, who worked  
11 for nextSource and in about October of 2015 he did become a  
12 Tesla employee. At the time that he's working for nextSource,  
13 he was working in the janitorial -- he's the janitorial  
14 supervisor for nextSource. He was not Mr. Diaz's supervisor.

15 He then became a Tesla employee and worked in contract  
16 services. And that's a different role. He wasn't supervising  
17 anybody, but that was his job title, contract services.

18 You're going to hear today, I believe, from Wayne Jackson.  
19 He worked for nextSource, and he was basically the on-site  
20 program manager for the contract, for the staffing employees.

21 You're also going to hear probably some testimony read  
22 from a deposition from Demetric Di-az. Demetric Di-az is  
23 Mr. Owen Diaz's son. He came to work through West Valley in  
24 about August of 2015 to come work in the battery area of the  
25 Tesla facility.

## OPENING STATEMENT / KENNEDY

1       The evidence is going to show that Mr. Diaz in August of  
2       2015, approximately, after being at the facility for two months  
3       or so, recommended to his youngest son, who at the time was  
4       about 19 years old, to come work at the Tesla facility. Go  
5       apply with the staffing agency. Come work for the facility.

6       The evidence is going to show that despite that  
7       recommendation to his youngest son, according to Mr. Diaz's  
8       testimony, after he stopped working there and without telling  
9       anyone at the Tesla facility about all these horrible words,  
10      that he was being called the "N" word multiple times, but still  
11      thought it would be a good idea to recommend that his  
12      19-year-old son come work in this environment.

13      The evidence is going to show that he also recommended  
14      other folks come and work at this facility, despite the fact  
15      that, according to him now, after he's hired a lawyer and the  
16      like, that this was the most racially hostile environment he's  
17      ever seen, that there's graffiti in the bathrooms, and it was  
18      so horrible for him that he did not want to return to work.

19      The evidence is going to show that during this time when  
20      he's suffering from all this, he's recommending for other folks  
21      to come to this Tesla facility to actually work.

22      The evidence is also going to show, you're going to hear  
23      some testimony from some Tesla employees:

24      Victor Quintero, who worked in recycling. You're probably  
25      going to hear from him tomorrow.

## OPENING STATEMENT / KENNEDY

1 Joyce dela Grande, and she worked as a production control  
2 supervisor, making sure the production was going. The evidence  
3 is going to show that part of the real story in this case is  
4 that Joyce dela Grande was working with Mr. Diaz, and at the  
5 beginning was doing a good job. He had no problems; but over  
6 time, once he became a lead, things changed.

7 You're going to hear testimony from Joyce dela Grande as  
8 to her issues with Mr. Diaz and his job performance with folks  
9 in the facility that led to the decision that -- probably from  
10 CitiStaff/nextSource, Mr. Diaz should probably not be in the  
11 lead elevator operator role any more. And that's one of the  
12 reasons why he decided not to return back to working for  
13 CitiStaff at the Tesla facility.

14 And finally you're going to hear from Annalisa Heisen.  
15 She's in HR and she will be testifying about policies and  
16 procedures.

17 So this is just sort of an overview about some of the  
18 evidence that you're going to hear. But the one thing you're  
19 going to see in this case is at no point in time did any Tesla  
20 employee engage in the harassing conduct that Mr. Diaz claims  
21 occurred. No Tesla employee used the "N" word or any other  
22 vile, horrible words.

23 All my questions in this case and my co-counsel's  
24 questions in this case, we're never going to use the full word.  
25 It's going to be the "N" word. It's going to be in writings.

## OPENING STATEMENT / KENNEDY

1 It's going to be in -- I'm sorry. It's going to be in how we  
2 speak, but you're not going to see it in writings anywhere.

3 And we ask you to take a look at all the writings in this  
4 case and, in particular, look at the writings of Mr. Diaz at  
5 the time when things are going on and what he is suing for  
6 today. Because the real story is very different; that what  
7 happened at the time is a very different story as to what he's  
8 telling us now.

9 So let's talk about what the real story is in this case,  
10 and the real story is Mr. Diaz had a nine-and-a-half month  
11 assignment at the Tesla facility.

12 In June of 20- -- I'm sorry -- June of 2015, he applies to  
13 work as an elevator operator. He fills out an application,  
14 submits his resume, completes all the onboarding documents  
15 through CitiStaff, fills out the appropriate tax forms, all for  
16 CitiStaff, and he gets placed at the Tesla facility as an  
17 elevator operator.

18 And by all accounts, the next two to three weeks he's  
19 doing a good job. You'll see an email from representatives of  
20 nextSource basically saying that, you know, he's doing a good  
21 job. And he gets promoted to lead elevator operator very  
22 quickly. He also gets a commensurate pay increase by  
23 CitiStaff.

24 And around this time, according -- at the time he does  
25 recommend that his son Demetric come and work at the Tesla

## OPENING STATEMENT / KENNEDY

1 factory.

2 The evidence is going to show that at no point in time  
3 before he recommends his son to come has he ever put anyone at  
4 Tesla on notice about all this horrific racial conduct that he  
5 is here in this court asking for substantial damages for.

6 But, nonetheless, he recommends that Demetric Di-az come  
7 and work. He applies through West Valley, and he is hired by  
8 West Valley to work in the battery area of the factory.

9 Demetric Di-az only lasts a few weeks there, and his  
10 contract is terminated with West Valley in about October of  
11 2015.

12 You're going to hear evidence in this case that three days  
13 after his contract was terminated by West Valley, Demetric  
14 Di-az applies directly to Tesla to go back to work at the  
15 facility.

16 During this time in 2015, Mr. Owen Diaz is living in the  
17 same household with Demetric Di-az. They're living together.  
18 They're a family.

19 In December of 2015, Mr. Diaz goes and he's looking for  
20 other jobs on Indeed.com. And during this time period, he's  
21 not looking for other assignments through CitiStaff. He's  
22 going to look for other jobs. This is going to be important  
23 because as part of the storytelling in this case and what  
24 actually really happened, what the real story is is different  
25 than what he is claiming here in this courtroom.

## OPENING STATEMENT / KENNEDY

1       Despite what he's going to testify here in this courtroom  
2       and after the time he got hired -- he hired a lawyer and  
3       claiming all this racial harassment, he's still getting pay  
4       increases by CitiStaff. He's still doing his job as a lead  
5       elevator operator for CitiStaff.

6       But sometime in June -- I'm sorry -- January-February of  
7       2016, he starts having conflicts with other employees of other  
8       staffing agencies. None of these other individuals has he  
9       accused of making any type of racial comments to him. All  
10      these interactions have to do with how he's doing his job as  
11      the elevator operator and how he's basically customer service,  
12      which means dealing with other workers in the factory about  
13      getting materials in -- in and up and down the elevator.

14      And there are complaints to Joyce dela Grande and other  
15      people about how Mr. Diaz is not being cooperative in those  
16      areas, and they are complaining to folks, and there's  
17      conversations about this. And at some point in time Joyce  
18      dela Grande says her leads, who have to get material up and  
19      down the elevator, can no longer work with Mr. Owen Diaz.

20      And Joyce dela Grande is going to testify that she asked  
21      Ed Romero that, we've got to do something about this. The  
22      decision is made not to have Owen Diaz sent back to the  
23      staffing agency. The decision is made, well, maybe he can just  
24      become an elevator operator again and not a lead.

25      So there's discussion about that in February of 2016, and



## OPENING STATEMENT / KENNEDY

1 a decision was made that they were going to talk to him about  
2 becoming an elevator operator instead of an elevator operator  
3 lead. And during this time period, he's given a final written  
4 warning about his interpersonal interactions with other folks.

5 It is unfortunate that Mr. Diaz's mother passed away on  
6 February 27th, 2016, according to an email that he sent to  
7 Mr. Romero. He sent it about a week and a half after his  
8 mother unfortunately passed away. He sent the email on  
9 March 4th, 2016, which I think is about the last day he was at  
10 the Tesla facility. And he says: I'm going to take leave on  
11 March 9th, 10th, and 11th. I will be back to work on the 12th.

12 During this time, there are calls to Mr. Diaz about  
13 whether or not he's going to take the elevator operator  
14 position, no longer be the lead. He doesn't respond, and we  
15 found out in this lawsuit he was looking for other jobs  
16 starting on March the 17th. He was supposed to let Ed Romero  
17 know by the 17th if he was going to become the elevator  
18 operator. No response.

19 So at some point in time Mr. Diaz submits a doctor's note  
20 saying he's going to be out for three weeks. He doesn't send  
21 it to Tesla. He sends it to Wayne Jackson of nextSource, his  
22 employer.

23 He doesn't return back to work, and at some point in time  
24 CitiStaff, not Tesla, terminates Mr. Diaz's employment  
25 agreement/arrangement with CitiStaff.

## OPENING STATEMENT / KENNEDY

1        So the last time that Mr. Diaz was actually at the Tesla  
2        facility was early March of 2016.

3        Now, that's what occurred with his performance. You're  
4        going to hear evidence in this case and no one is going to  
5        dispute that Mr. Diaz did make complaints during his  
6        nine-and-a-half month assignment at the Tesla facility.

7        These are the complaints that he made. These complaints  
8        are all in writing. He's a very smart man. He's been around  
9        the block. At one point in time, according to his resume, he  
10       actually ran his own franchise. He knows how things work.

11       The evidence is going to show that when he felt strongly  
12       about something, he had no problem documenting it in writing to  
13       anyone who would listen.

14       And in July of 2015 he did make a complaint about a fellow  
15       employee. This is Judy Timbreza, and he's a male, and about  
16       some altercation. You're going to hear testimony from Tom  
17       Kawasaki about that and Mr. Diaz.

18       At the time in all the recorded information no one says  
19       the "N" word. There are emails that there were comments that  
20       were racial in nature. We don't dispute that. Absolutely.  
21       That's what the documentation says.

22       The documentation is also going to say that there was an  
23       investigation. Judy Timbreza, one, did not work for Tesla. He  
24       worked for a staffing agency. The matter was investigated.  
25       Judy Timbreza was gone. Mr. Diaz at that time never had any

## OPENING STATEMENT / KENNEDY

1 more contact with Judy Timbreza. He admitted that under oath  
2 in his deposition.

3 So as of July of 2015, Mr. Diaz knows you make a  
4 complaint, document it, it's resolved, and it's done. At no  
5 point in time as of July 31st, 2015, did Mr. Diaz put anything  
6 in writing about any of these horrible racial slurs.

7 On October 17th, 2015, Ramon Martinez and Owen Diaz had an  
8 argument at the elevator, absolutely. They're arguing about  
9 getting these materials in the elevator, out of the elevator,  
10 and the like.

11 Mr. Ramon Martinez actually complained first about Owen  
12 Diaz, and Mr. Martinez explained about being unprofessional.  
13 He just wants Mr. Diaz to treat him professionally. Those are  
14 his words in his email.

15 Shortly thereafter, Mr. Diaz complains about Ramon  
16 Martinez, and he complains about the same thing and also  
17 accuses Ramon Martinez of threatening him. You're going to  
18 hear testimony from both of them. You'll have to decide what  
19 actually happened.

20 But what is most important and telling about this is that  
21 according to the evidence, at this time on October 17th, 2015,  
22 there's no negative interaction between Ramon Martinez and Owen  
23 Diaz. Ramon Martinez is going to come in and testify that when  
24 Mr. Diaz first came to work at the location, they were  
25 friendly. They got along. Mr. Diaz talked to Mr. Martinez

## OPENING STATEMENT / KENNEDY

1 about how to get ahead, how do things work, and the like.

2 Ramon Martinez was a lead. So was Mr. Diaz.

3 According to the testimony, after the lawsuit was filed,  
4 Mr. Diaz then said that as of this time Ramon Martinez had  
5 called him the "N" word and "porch monkey" and everything else  
6 under the sun; but when he had the opportunity to actually  
7 write a complaint to Ed Romero about the conduct of Ramon  
8 Martinez, none of those words are ever in any text message,  
9 email, and the like.

10 So if, in fact, it had happened and Tesla had been made  
11 aware of it, they could have handled it. If, in fact, it had  
12 happened. It didn't happen. All of these words that according  
13 to Mr. Diaz, the "I hate you 'N,'" "I hate you effing 'N,'" "I  
14 wish all you 'Ns' would die," none of that was there.

15 After this October 17th, 2015, incident, both gentlemen  
16 were talked to and the matter was over with.

17 A few days later, November 5th, 2015, there's an incident  
18 with a contract worker, Rothaij Foster, with Mr. Diaz. At that  
19 time Mr. Diaz's testimony was that he, as a lead, was training  
20 Rothaij Foster on the elevators. According to the written  
21 complaint by Mr. Diaz, Rothaij Foster was threatening him and  
22 doing other things.

23 The matter was investigated. Rothaij Foster was walked  
24 out of the facility never to be seen from again. Rothaij  
25 Foster had a different perspective on it, but that was not

## OPENING STATEMENT / KENNEDY

1 taken into account. CitiStaff/nextSource believed Owen Diaz's  
2 version of events. It was handled. It was done.

3 Again, as of November of 2015, Mr. Diaz knows you make a  
4 written complaint, you state what happens, it's investigated,  
5 and it's handled.

6 If, in fact, the evidence is going to show, again,  
7 virulent racial harassment had been going on, he was putting it  
8 in writing, documented it somewhere, it would have been  
9 handled. Not one piece of paper.

10 Now, we do get to January 2016 and the incident about this  
11 cartoon, this drawing, on the bale. It was January 21st, 2016.  
12 Mr. Diaz did complain about the drawing. Undisputed. The  
13 evidence is also going to show that's not the whole story.

14 Mr. Diaz provided a picture of that cartoon to Ed Romero.  
15 The problem is that was part of the cartoon that was drawn.  
16 There was a cartoon that Mr. Martinez did admit drawing, and  
17 he'll explain to you what it meant and why he did it.

18 There is another part that's on a bale, which you'll see  
19 in evidence. It's Exhibits 1 and 2. You're going to see this.  
20 It's a Pac-Man.

21 Remember the Pac-Man? And part of the Pac-Man there is a  
22 little ghost. And, apparently, on these shifts in this area  
23 the workers were having a competition who could do more work,  
24 whether it was the graveyard shift, the swing shift or the  
25 morning shift. So someone drew a Pac-Man, and then for the

## OPENING STATEMENT / KENNEDY

1 morning shift they drew a little ghost. You know, Pac-Man eats  
2 the ghost. For the swing shift, the same thing. And for  
3 the -- another ghost on the graveyard shift or the day shift.

4 Mr. Martinez will testify that he was part of this, and he  
5 drew this cartoon that he recalls from his childhood in Mexico  
6 as this cartoon, and he said it was a ghost, and the ghost was  
7 going to eat all of the other little ghosts. This sounds  
8 ridiculous, but this is what the story was.

9 Looking at that cartoon, we don't dispute this is not an  
10 appropriate cartoon at all. Once this occurred, once this  
11 cartoon was there, Mr. Diaz saw the cartoon, took a picture,  
12 wrote out his email about this, and reported it to Ed Romero.

13 Ed Romero is going to testify that when he gets the email,  
14 he looked at it. This was an offensive cartoon. There's no  
15 dispute. The evidence is also going to show that it was looked  
16 into immediately, and that Mr. Martinez was approached by Owen  
17 Diaz and said: Who wrote -- who drew this? He said: I drew  
18 it.

19 And according to Mr. Martinez's testimony, he's going to  
20 testify that he saw it, saw Owen was upset, explained it wasn't  
21 intended for him. Didn't know Mr. Diaz was around. It was a  
22 cartoon, and he apologized. Mr. Martinez is also going to  
23 testify as to how he felt when he saw Mr. Diaz and how upset he  
24 was at the time.

25 The evidence is going to show that he did write a

## OPENING STATEMENT / KENNEDY

1 statement as part of the investigation. He apologized  
2 immediately. He felt bad about it, didn't understand the  
3 racial significance of this. He was then given a three-day  
4 suspension, which he will tell you was fair. He will tell you  
5 that this has affected him adversely. He didn't think that  
6 this was something that was going to be from Mr. Diaz or  
7 anything else.

8 Again, at this point in time in January 2016 when Mr. Diaz  
9 complained that this was Ramon Martinez, nothing in writing  
10 about these horrible racial slurs.

11 Next we have several complaints about Mr. Diaz from people  
12 unrelated to all these other individuals about work performance  
13 that sort of lead to this February 2016 time period and events  
14 with his mother passing away and then deciding not to return to  
15 work.

16 So that's the real story. And the real story is going to  
17 be that at all points in time, every complaint that he made was  
18 handled and responded to, and no evidence of any type of racial  
19 epithets, and, more important, no racial conduct by any Tesla  
20 employee whatsoever.

21 So why are we here? There are two claims in this case.  
22 As part of the way the evidence comes in you, the jurors,  
23 decide what the facts are. The judge provides the law. And  
24 here there are two basic claims you're being asked to decide.

25 And the first one is called basically violation of 42

## OPENING STATEMENT / KENNEDY

1 U.S.C. 1981. It's basically a federal civil rights statute.  
2 And the questions you're going to be asked to determine is  
3 whether or not Tesla is liable for race-based harassment toward  
4 Mr. Diaz, whether Tesla is responsible for failing to prevent  
5 race-based harassment in the workplace.

6 And then you're also going to be asked whether or not  
7 Tesla negligently supervised or retained Ramon Martinez, who in  
8 2015-2016 was never a Tesla employee.

9 So the evidence is going to show in this case that there  
10 were two very different stories. And your job is to determine  
11 what is the real story. And the real story in this case is  
12 that Tesla is simply not responsible for the race-based  
13 harassment that Mr. Diaz claims after he stopped working for  
14 CitiStaff occurred to him.

15 Thank you.

16 **THE COURT:** Ladies and gentlemen, why don't we take  
17 our first break of the morning. We will be back here at five  
18 of.

19 And just remember the admonitions, and I will tell you  
20 this constantly throughout the trial. You are free to talk  
21 with each other about all manner of things except for anything  
22 having to do with what you're learning in the courtroom. That you  
23 need to just keep your own counsel until it's time to  
24 deliberate at the end of the case.

25 So let's take our 15-minute break, and then we'll be back



1 with the first witness.

2 (Whereupon there was a recess in the proceedings

3 from 10:40 a.m. until 11:00 a.m)

4 **THE COURT:** All right. Please be seated.

5 Ladies and gentlemen, I will tell you why it is that  
6 people stand up when you come into the courtroom. It's in  
7 honor of the service that you are providing. And so you are  
8 very free to sit down when you get to your seats, and we stay  
9 standing until everybody else is in the courtroom. So I just  
10 wanted to let you know that.

11 **THE CLERK:** I believe we are missing somebody.

12 **THE COURT:** We are missing somebody. I was just  
13 noticing that. Thank you.

14 (Juror enters courtroom.)

15 **THE COURT:** We weren't going to start without you.

16 **JUROR:** I appreciate that. Thank you.

17 **THE COURT:** Mr. Organ, who is your first witness?

18 **MR. ORGAN:** Our first witness is Tom Kawasaki,  
19 Your Honor.

20 **THE COURT:** All right.

21 **TAMOTSU EDWEEN KAWASAKI,**  
22 called as a witness for the Plaintiff, having been duly sworn,  
23 testified as follows:

24 **THE WITNESS:** I do.

25 **THE CLERK:** Be seated.

**KAWASAKI - DIRECT / ORGAN**

1 And then if you would please state your full name for the  
2 record and spell it for the court reporter.

3 **THE WITNESS:** Tamotsu Edween Kawasaki. T-A-M-O-T-S-U,  
4 middle name E-D-W-E-E-N, last name Kawasaki, K-A-W-A-S-A-K-I.

5 **THE COURT:** Mr. Kawasaki, I just want you to know that  
6 it is your choice, if you're vaccinated, to remove your mask  
7 while you're testifying. If you want to keep it on --

8 **THE WITNESS:** I will keep my mask on. We're in a  
9 confined spot. I am vaccinated though.

10 **THE COURT:** Excellent.  
11 Okay. Please proceed.

12 **MR. ORGAN:** Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 **BY MR. ORGAN:**

15 **Q.** Mr. Kawasaki, do you also go by Tom?

16 **A.** Tom is easier. It's just more American. I don't like  
17 when people butcher my real name.

18 **Q.** Good morning. How are you?

19 **A.** I'm good.

20 **Q.** Where did you grow up?

21 **A.** I grew up in Daly City, California.

22 **Q.** And are you married?

23 **A.** I am married.

24 **Q.** Do you have any children?

25 **A.** I do.

KAWASAKI - DIRECT / ORGAN

1 Q. At some point in time have you worked at Tesla?

2 A. Yes, I did.

3 Q. And how did you hear about a job being available at Tesla?

4 A. I applied on an online website, Indeed.com.

5 Q. And how did you actually go about applying for the  
6 position? What was that process?

7 A. My resume was on Indeed. I just hit "Apply." I got a  
8 response back, and it ended up being a staffing agency,  
9 Chartwell Staffing.

10 Q. Okay. And what position were you hired for at Tesla?

11 A. They hired me, it was in the environmental sustainability  
12 group, and it was for moving recycling from one part of the  
13 plant to another.

14 Q. Okay.

15 A. Sorter. I think it was called sorter.

16 Q. And this was at the Fremont plant in --

17 A. In Fremont. The old Toyota factory, yes.

18 Q. When you started working at the Fremont plant, did you go  
19 through any kind of orientation?

20 A. So first I went to Chartwell Staffing in Hayward, and they  
21 verified my information and all that. And then they sent me to  
22 Tesla, to go to Tesla security to get a badge.

23 Q. And when you got to Tesla to get the badge, did you do  
24 anything else with Chartwell after that?

25 A. No. What do you mean by "anything else"?

## KAWASAKI - DIRECT / ORGAN

1 Q. That's a good point. Did you go to a Chartwell facility  
2 again after that --

3 A. No.

4 Q. -- relative to your job at Tesla?

5 A. No, I did not.

6 Q. And in terms of the orientation that was conducted at  
7 Tesla, what was that?

8 A. It was just orientation of, okay, you're here from  
9 Chartwell. Okay. You're a staffing agency. You need to go  
10 through security. So I gave them my I.D. And that's about it,  
11 and they gave me a security badge.

12 Q. Were there any other contract employees working at Tesla  
13 when you started?

14 A. From my knowledge, my first day I didn't know anything  
15 else. I didn't know there was other contractors or anything  
16 like that.

17 Working there, I realized, yeah, there was other  
18 contractors, other groups, other staffing agencies that hired  
19 other employees at Tesla.

20 Q. From your perspective, was there a difference between the  
21 people who were contractor employees and those who were direct  
22 Tesla employees?

23 A. The difference to me was Tesla just -- I mean, we had  
24 access to the same amenities that the Tesla employees had,  
25 other than food and stuff like that.

**KAWASAKI - DIRECT / ORGAN**

1 We were working 12-hour shifts at that time, but there  
2 was -- I didn't -- really, the only difference was they were  
3 Tesla. They had opportunity to get stocks in Tesla and stuff,  
4 and we were just a staffing agency.

5 **Q.** Who told you -- who told you what your schedule was going  
6 to be?

7 **A.** My schedule, Victor Quintero and Jaime Salazar were my  
8 immediate people that I reported to.

9 **Q.** Tell the jury who Jaime Salazar was. Who was he?

10 **A.** I believe Jaime Salazar was right under Victor Quintero at  
11 Tesla.

12 **Q.** And was Victor Quintero the manager then?

13 **A.** To my knowledge, he was the head of environmental  
14 sustainability from what I knew, from my recollection. So I  
15 don't know. That's just who the people I reported to.

16 **Q.** And you said you reported to Jaime Salazar. Do you know  
17 what his position was?

18 **A.** I don't know what his actual title was. No, I do not.

19 **Q.** Okay. Do you know if Jaime was a Tesla employee, direct  
20 Tesla employee, or a contract employee?

21 **A.** To my knowledge, he was a direct Tesla employee.

22 **Q.** Okay. And so during the time that you were working at  
23 Tesla, did you receive your paychecks from Tesla or from  
24 Chartwell?

25 **A.** Chartwell Staffing. My checks came directly from

1 Chartwell.

2 **Q.** And other than providing your paychecks, what role did  
3 Chartwell play in your day-to-day aspects of your job at Tesla?

4 **A.** None.

5 **Q.** Now, you mentioned something, I think, about breakfast.  
6 Did Tesla provide breakfast?

7 **A.** So we have the same access to the amenities that Tesla  
8 provided. They had a bunch of satellite areas where you can  
9 eat breakfast. They had cereal bars, milk, soda machines, and  
10 stuff like that. So they were just locations where you can  
11 eat.

12 Like I said, we were working 12-hour shifts. We were  
13 there for 12 hours every day so they provided food.

14 **Q.** And which company provided you with safety equipment? Was  
15 it Chartwell or was it Tesla?

16 **A.** Tesla.

17 **Q.** I'd like you to look at -- you've got a little notebook  
18 there. If you could look at Exhibit 366 in it, the white one.

19 The little -- yeah, that. And if you could look at  
20 Exhibit 366.

21 **THE COURT:** This should not be displayed at the moment  
22 except for to the lawyers.

23 **MR. ORGAN:** Okay. So is this visible to just the  
24 lawyers?

25 **THE CLERK:** At this point, yes.

1 **BY MR. ORGAN:**

2 **Q.** Okay. So she can show you --

3 **THE COURT:** Some of us don't have it at all.

4 **MR. ORGAN:** Yeah. Can you show the exhibit now,  
5 Sabrina, because it won't show to the jury?

6 (Document displayed.)

7 **BY MR. ORGAN:**

8 **Q.** Do you recognize Exhibit 366, the stuff that's on that  
9 list there? Was that the type of things you got from Tesla?

10 **A.** So we got gloves and safety glasses. We didn't get a bump  
11 hat, safety shield.

12 **Q.** If you go to the next page, you see some vending machines.  
13 Do you see that?

14 **A.** Yeah.

15 **Q.** Could you get things out -- safety equipment out of those  
16 vending machines?

17 **A.** In the beginning when I worked for Tesla, we did not have  
18 access. Our security badges did not have access to the vending  
19 machines. We had to go through a Tesla employee to get this  
20 safety equipment.

21 **Q.** But did you get safety equipment out of that if a Tesla  
22 employee helped you?

23 **A.** Yes.

24 **Q.** And then eventually did you get access to the vending  
25 machines?

**KAWASAKI - DIRECT / ORGAN**

1 **A.** Eventually I did, as I got further with the company -- or  
2 with Chartwell and getting higher up.

3 **Q.** Okay.

4 **MR. ORGAN:** Your Honor, I would move Exhibit 366 into  
5 evidence.

6 **THE COURT:** Any objection?

7 **MS. JENG:** No, Your Honor.

8 **THE COURT:** All right. It's admitted.

9 (Trial Exhibit 366 received in evidence)

10 **THE COURT:** Which means it can be displayed to the  
11 jury, if you would like to do that.

12 **MR. ORGAN:** Yes. Could we display that to the jury?

13 (Document displayed.)

14 **BY MR. ORGAN:**

15 **Q.** Okay. So you mentioned some safety gloves. There are  
16 some gloves on this. Were those the kind of gloves that you  
17 got access to?

18 **A.** Yes.

19 **Q.** And what else could you get from Tesla?

20 **A.** The safety glasses.

21 **Q.** The safety glasses, those were provided by Tesla; is that  
22 right?

23 **A.** Correct.

24 **Q.** Now, relative to the elevators and recycling, do you know  
25 what Victor Quintero's role was?



1   **A.**   To my knowledge, he was the head of environmental  
2   sustainability. So, to me, it was just all of the recycling  
3   department. I don't know what his actual role was day-to-day  
4   after that.

5   **Q.**   And at some point in time you actually had some  
6   responsibility for the elevators; is that true?

7   **A.**   Correct.

8   **Q.**   Tell the jury, what was your job relative to the  
9   elevators?

10   **A.**   So I started off as a sorter. I was a sorter. So I was  
11   pretty much just moving recycling, going to the bundles,  
12   putting cardboard in a bundler and loading it onto a forklift.

13       I moved to the elevators, was working at the elevators.  
14   Got a little experience there, and then eventually became an  
15   elevator lead. So I pretty much ran the crew at the elevators.

16   **Q.**   So when you were an elevator lead, you had a crew of  
17   people who worked the elevator?

18   **A.**   Correct. I had about four to six people under me at any  
19   given time pretty much just working their shifts, coordinating  
20   shifts. If somebody called off, I would cover their shift.  
21   Things like that, in that nature.

22   **Q.**   Who promoted you to the lead position?

23   **A.**   Jaime Salazar did.

24   **Q.**   And Jaime Salazar worked for which company?

25   **A.**   He worked for Tesla.

## KAWASAKI - DIRECT / ORGAN

1 Q. And how many of the regular elevator employees, the  
2 operators, were contract employees, if you know?

3 A. To my knowledge, all of us were.

4 Q. Okay. And at this point in time when you were working on  
5 the elevators, did you ever perform any duties directly for  
6 Chartwell at that time?

7 A. I don't understand that question, "directly for  
8 Chartwell." I worked for Chartwell. I was just at Tesla.

9 Q. Okay.

10 A. So...

11 Q. And in terms of what was your role, you know -- do you  
12 know who Owen Diaz is?

13 A. Owen Diaz was actually under -- he came in when I was at  
14 the elevators. So he was --

15 Q. And what was your role relative to Mr. Diaz?

16 A. I was his supervisor.

17 Q. Okay.

18 A. Or lead, if you want to call it.

19 Q. Now, if you could, look at Exhibit 202.

20 (Witness complied.)

21 A. Okay.

22 Q. Do you recognize Exhibit 202?

23 A. Yes. This was the standard operating procedure that Tesla  
24 gave us -- that Jaime and Victor gave me when I had to train a  
25 new employee and we had them sign it.

**KAWASAKI - DIRECT / ORGAN**

1 **Q.** And was that standard operating procedure something that  
2 you used relative to the elevators at Tesla?

3 **A.** Correct.

4 **Q.** So you had to follow that standard operating procedure; is  
5 that correct?

6 **A.** Correct.

7 **MR. ORGAN:** Your Honor, I'd move Exhibit 202 into  
8 evidence.

9 **THE COURT:** Any objection?

10 **MS. JENG:** No objections.

11 **THE COURT:** All right. It's admitted.

12 (Trial Exhibit 202 received in evidence).

13 (Document displayed.)

14 **BY MR. ORGAN**

15 **Q.** Did you play any role at all in training Owen Diaz?

16 **A.** Yes. So when Owen Diaz and any new employee came in, I  
17 would show them what the actual responsibilities and the work  
18 at the elevator, what we were expected to do and what our  
19 expectations were.

20 **Q.** And were those expectations and guidelines outlined by  
21 what's in Exhibit 202, this Tesla policy?

22 **A.** Correct. This is the actual guidelines that we had to  
23 train them on. Well, I did. This is what they gave me to give  
24 them to read, to understand. If they had any questions -- I  
25 would ask if they had any questions and then will give them

1 knowledge of: Hey, this is what the operating procedures are.  
2 I can't control. This is what we do.

3 **Q.** Okay. I'd like to take you back now in time to July 31st  
4 of 2015.

5 At this point in time July 31st, 2015, what's your role  
6 relative to Mr. Diaz?

7 **A.** July 31st, I believe I was his supervisor at that time.

8 **Q.** Okay. And your supervisor at that time was? Who was it?

9 **A.** Jaime Salazar and Victor Quintero. Ed Romero might have  
10 been.

11 There, you guys are asking me something six, seven years  
12 ago now. I mean, he -- Ed might have been in the picture at  
13 that time. He might have come in a little after. At some  
14 point Ed came in as well.

15 **MR. ORGAN:** I forgot to have the clerk publish that.  
16 If we could have 202 published.

17 (Document displayed.)

18 **BY MR. ORGAN:**

19 **Q.** And, again, this is the policy for the elevators; correct?

20 **A.** Correct.

21 **Q.** So Jaime was -- and, again, Jaime was a Tesla employee; is  
22 that correct?

23 **A.** Correct.

24 **Q.** Okay. And in terms of Ed Romero, at that point in time  
25 would you say that you had sort of a dotted line reporting to

## KAWASAKI - DIRECT / ORGAN

1 him?

2 **A.** So when Ed Romero came in, Victor and Jaime said: Hey,  
3 this is your new supervisor. This is who you report to. You  
4 cc him on every email that you send out.

5 **Q.** Okay. Were you still reporting to Jaime Salazar at that  
6 point too?

7 **A.** Correct. I was reporting to all of them. He just came  
8 in.

9 **Q.** And both Jaime and Ed Romero, they were both under Victor  
10 Quintero; is that right?

11 **A.** Correct.

12 **Q.** Now, at some point you send an email regarding Owen Diaz.  
13 Do you remember that?

14 **A.** It's vaguely familiar. I believe he had an altercation  
15 with another employee at the elevators.

16 **Q.** Why don't you look at Exhibit 38 and see if you recognize  
17 it.

18 (Witness complied.)

19 **A.** Yes. This was an issue where they had a verbal  
20 altercation, which they had a big altercation together. And I  
21 put Ed, Victor, and Jaime and made them aware of it, because we  
22 worked an overnight shift and these guys worked the day shift.  
23 So the only way to get ahold of them was through email and they  
24 would respond in the mornings.

25 **Q.** The people who -- the supervisor --

**KAWASAKI - DIRECT / ORGAN**

1 **A.** My supervisors; correct.

2 **Q.** And you worked the night shift along with Mr. Diaz and  
3 Mr. Timbreza; is that right?

4 **A.** Correct.

5 **MR. ORGAN:** Okay. Your Honor, I'd move Exhibit 38  
6 into evidence.

7 **THE COURT:** Any objection?

8 **MS. JENG:** No.

9 **THE COURT:** All right. It's admitted.

10 (Trial Exhibit 38 received in evidence).

11 (Document displayed.)

12 **BY MR. ORGAN:**

13 **Q.** And so you mentioned there was an altercation that made  
14 you send the email. So if you can, describe what happened for  
15 the jury that day? How did you become first aware of the  
16 altercation?

17 **A.** So at this point in Tesla, just to give a little  
18 background, I was actually bumped up to the overnight shift  
19 lead. So I had a bunch of different departments that I had to  
20 cover at that time.

21 I was -- got a phone call saying there was an altercation  
22 at the elevators, that they were having an issue. I show up.  
23 They were actually face-to-face, looking like they were arguing  
24 with each other about to fight.

25 So my immediate recourse was to push them aside, separate

## KAWASAKI - DIRECT / ORGAN

1 them. There was some people around, so I asked questions:  
2 What happened? What's going on? Did anybody else see it?  
3 Because I wasn't there at the time. I was at a different  
4 section of the warehouse.

5 But when I did pull up, they were really about close.  
6 They didn't touch each other, but they were face-to-face like  
7 they were about to fight, and I separated them.

8 And when I asked people what happened, there was some  
9 racial slurs thrown in nature. That's what I got from people.  
10 So I immediately sent Judy Timbreza home because they said he  
11 was saying the slurs.

12 Q. Okay. And did you talk to Owen Diaz?

13 A. I did.

14 Q. And what did -- did Owen Diaz tell you what Judy Timbreza  
15 had called him?

16 A. So I don't -- I didn't put anything in -- I just put  
17 "racial in nature" because I'm not comfortable using those  
18 words that were thrown. It's just not me. I don't throw those  
19 words around lightly.

20 But, yeah, he said the "N" bomb was thrown and the --  
21 called him a "coon" and things of that nature. But I don't  
22 like using those words. It's not me. So I just put "racial in  
23 nature" in the email. That was the best way I could phrase it  
24 at that time.

25 Q. Okay. But you do remember then that Mr. Diaz said that

## KAWASAKI - DIRECT / ORGAN

1 Mr. Timbreza called him the "N" word; is that right?

2 **A.** He said that. And then as, like, other people they are  
3 witnesses -- like I said, this was all new to me being a  
4 supervisor at the time. I just -- I felt like I did my due  
5 diligence putting it into an email and giving it to my higher  
6 ups.

7 **Q.** So if someone had represented to the jury that Owen Diaz  
8 did not complain about the "N" word, that no "N" word was  
9 reported, that would not be correct; is that accurate?

10 **A.** Yes.

11 **Q.** Okay. And then you -- I believe after this happens, you  
12 have a conversation -- well, strike that.

13 Do you have a conversation with Ed Romero at any time  
14 about this altercation between Mr. Timbreza and Mr. Diaz?

15 **A.** So this altercation happened. I immediately sent Judy  
16 home for the night. I believe this happened close to a  
17 weekend. It could have been a Thursday or a Wednesday. It  
18 could have been a Friday. I knew it was close. I knew they  
19 were both due back next week to work a shift together, and I  
20 think I asked Ed or Victor or one of them: Hey, what's going  
21 on? What -- are we taking -- what actions are you guys taking  
22 in this? Can they work together or can they not? After that,  
23 it was out of my hands.

24 **Q.** Did you mention to Mr. Romero -- well, did Mr. Romero tell  
25 you anything about receiving your email?



## KAWASAKI - DIRECT / ORGAN

1 A. I think he replied. I'm not sure. I don't have access to  
2 Tesla's emails anymore. Like I said, everything is in the  
3 email chain. I had an actual Tesla email, so I don't have  
4 access to any of that stuff anymore.

5 Q. Okay. And so once -- once you sort of passed this up the  
6 chain of command, you didn't have any further role in  
7 investigating; is that right?

8 A. No, I did not.

9 Q. Okay. But in terms of -- in terms of whether the incident  
10 actually occurred or not, based on what you were told by the  
11 witnesses and by Mr. Diaz, did you come to some conclusion as  
12 to whether or not racial insults were tossed, I think, as you  
13 said?

14 A. So it just -- just from getting a few people that said:  
15 Hey, racial words were thrown. This is what was thrown. Like  
16 I said, my immediate thing was I had to separate them, and I  
17 sent the party home that said the slurs.

18 Q. So it would be fair to say that you reached a conclusion  
19 that Mr. Timbreza had directed racist remarks towards Mr. Diaz;  
20 is that right?

21 A. Yes.

22 Q. Okay. And it's fair to say at that point in time, as far  
23 as you knew, those included the "N" word; right?

24 A. At that point in time, that's what was said. And like I  
25 said, I made the immediate assumption to send Judy home for the

**KAWASAKI - DIRECT / ORGAN**

1 night.

2 **Q.** And when did you conduct these interviews with the  
3 witnesses?

4 **A.** That was the people that were around at that time, and  
5 those are what the people had stated. And, like I said, to  
6 just defuse the situation, one of them had to go home.

7 **MR. ORGAN:** Is this published to the jury?

8 **THE CLERK:** Yes.

9 **MR. ORGAN:** It is. I just want to make sure they can  
10 see it.

11 **BY MR. ORGAN**

12 **Q.** You also sent this to Victor Quintero, the guy who was  
13 head of recycling; is that right?

14 **A.** Yes. They were all cc'd on the email. You can see their  
15 names are cc'd on the email.

16 **Q.** And why did you send it to him?

17 **A.** Because that's what I was told to do. I was told to cc  
18 Victor, Jaime and Ed, because Ed came in at the time.

19 **Q.** Okay. And then, if you could, turn to Exhibit 37. And  
20 this looks like it's an email to you from Mr. Romero. Do you  
21 recognize that?

22 **A.** That is an email to me, correct.

23 **Q.** Okay.

24 **MR. ORGAN:** Your Honor, I'd move Exhibit 37 into  
25 evidence.

KAWASAKI - DIRECT / ORGAN

1           **THE COURT:** Any objection?

2           **MS. JENG:** No.

3           **THE COURT:** It's admitted.

4           (Trial Exhibit 37 received in evidence).

5           **MR. ORGAN:** And then can we publish this one?

6           **THE COURT:** Yes, you may.

7           **MR. ORGAN:** Okay. I'm getting better.

8           (Document displayed.)

9           **BY MR. ORGAN**

10          **Q.** In terms of Exhibit 37, he says that (as read):

11                   "I'm following up with a discussion with Jaime on  
12                   Monday."

13           Do you see that?

14          **A.** Yes.

15          **Q.** Do you know if a discussion with Jaime actually occurred?

16          **A.** That -- that's what he said he was doing.

17          **Q.** Okay.

18          **A.** I wasn't privy to that meeting or anything like that.

19           Like I said, I worked the overnight shift. There would be  
20           sometimes that Victor or Jaime would ask me to stay a little  
21           past my shift to meet with them in the morning.

22           Like I said, I worked the overnight shift. They worked  
23           the day shift. Sometimes they would come in at 6:00 a.m. to  
24           discuss what happened or what was going on and how the night  
25           shift went.

## KAWASAKI - DIRECT / ORGAN

1 Q. Did you -- in your discussion -- I believe you said that  
2 you had a discussion with Ed Romero where you told him what  
3 happened; is that right?

4 A. Correct.

5 Q. When you were talking to Mr. Romero, do you recall whether  
6 or not you actually told him the "N" word had been used?

7 A. Yes, I believe I did. I believe that -- I'm just trying  
8 to remember this. I believe this was that following either  
9 Monday or Tuesday --

10 Q. Uh-huh.

11 A. -- after the incident happened.

12 Q. Okay.

13 A. I believe we had a discussion, and that's where Ed came  
14 with some paperwork, some document saying: Hey, this is --  
15 this is what happened. This is what we're putting in the  
16 documents. And Judy needs to sign this, and you need to make  
17 him aware that, hey, this is the steps. We're actually writing  
18 you up for this situation. And make him aware that three  
19 write-ups is a layoff.

20 Q. Okay. And in terms of -- regardless of what you actually  
21 told him about what was said, did you tell Mr. Romero whether  
22 or not the witnesses had corroborated the story or confirmed  
23 that the racial things had been tossed?

24 A. Yes, I did. And I said that's why I made the decision to  
25 send Judy home for the night.

**KAWASAKI - DIRECT / ORGAN**

1 **Q.** Okay. Now, I'd like you to turn, if you could, to  
2 Exhibit 40.

3 (Witness complied.)

4 **Q.** If you go up to -- at the bottom of this there is some  
5 back and forth between you on August 3rd. Do you see that?

6 **A.** Correct.

7 **Q.** And between you and Ed Romero.

8 **A.** Correct.

9 **Q.** And then Ed sends you another email on the 4th; is that  
10 right?

11 **A.** Correct.

12 **MR. ORGAN:** Your Honor, I would move Exhibit 40 into  
13 evidence.

14 **THE COURT:** Any objection?

15 **MS. JENG:** No objection.

16 **THE COURT:** Okay. It's admitted.

17 (Trial Exhibit 40 received in evidence).

18 **THE COURT:** And it should be published.

19 **MR. ORGAN:** Yes. Can we please publish that?

20 (Document displayed.)

21 **BY MR. ORGAN**

22 **Q.** Okay. Now, I guess you were having some difficulty  
23 getting in touch with Mr. Romero; is that right?

24 **A.** Yes.

25 **Q.** But you did have that meeting with -- do you remember

**KAWASAKI - DIRECT / ORGAN**

1 where the meeting was?

2 **A.** It was -- I believe it was on the second floor at the  
3 break room.

4 **Q.** Okay. Did you guys have breakfast together or what --

5 **A.** I probably had breakfast. I believe I ate.

6 **Q.** Okay.

7 **A.** I don't know if he might have had a glass of juice or  
8 something. I don't know. I honestly don't know.

9 **Q.** So now I'd like you, if you would, turn to Exhibit 43.

10 **A.** You said 43?

11 **Q.** Oh, wait. What am I talking about? 39. 39.

12 **A.** Okay.

13 (Witness complied.)

14 **Q.** Now, this is not copied to you, but there's a statement  
15 here.

16 **MR. ORGAN:** And, Your Honor, I would move Exhibit --  
17 this is a stipulated document, Exhibit 39. I'd like to move it  
18 into evidence.

19 **THE COURT:** All right. If it's stipulated, it's  
20 admitted and can be published.

21 (Trial Exhibit 39 received in evidence)

22 **MR. ORGAN:** Yes. If we could publish it, please.

23 (Document displayed.)

24 **BY MR. ORGAN:**

25 **Q.** Now, there are two things in here I'd like to go over.

**KAWASAKI - DIRECT / ORGAN**

1 If you look about midway in, it says -- this is, again,  
2 Mr. Romero's words not yours, but he says here (as read):

3 "Mr. Owen says this has happened before."

4 **MR. ORGAN:** Can you pull that out so the jury can see  
5 that better?

6 (Document enlarged)

7 **BY MR. ORGAN:**

8 **Q.** Okay. Had Owen told you that Mr. Timbreza had been  
9 engaging in harassing conduct towards him prior to this  
10 July 31st event?

11 **A.** I believe he said they were having altercations. He  
12 didn't say anything like -- I mean, maybe they were arguing  
13 about something. I don't recall him saying anything, like,  
14 racial in nature from that sense or source, but I know they  
15 were having altercations.

16 **Q.** Did you communicate the fact that this had been a pattern  
17 of conduct to Mr. Romero?

18 **A.** I believe -- I don't know where this email came. Like I  
19 said, I don't have any -- this was not sent to me, so I don't  
20 have any recollection of this email or anything that this email  
21 states.

22 **Q.** Sure.

23 **A.** I know there was a bunch of altercations at the elevator.  
24 I know people were having issues. I did my best to separate  
25 them during those altercations or move them to different

1 shifts. I didn't have the power to lay people off or anything  
2 of that nature, so I would just do my best.

3 Like I said, not everybody gets along. You don't get  
4 along with your coworkers at all times, but you have to deal;  
5 right? We all need to check, so...

6 **Q.** Okay. But if you go up to the second sentence in this  
7 document, it says -- do you see where it says (as read):

8 "We investigated by speaking to all witnesses  
9 present, but they did not hear the remarks"?

10 Now, based on your investigation, is that a true  
11 statement?

12 **A.** That is not.

13 **Q.** So based on what you knew about this event, you knew that  
14 actually people had heard racial remarks; correct?

15 **A.** Correct.

16 **Q.** And based on what you had told Mr. Romero at that point in  
17 time, Mr. Romero knew that there had been witnesses to the  
18 racial remarks; right?

19 **A.** Correct.

20 **MS. JENG:** Objection. Calls for speculation.

21 **THE COURT:** The answer is out, so I will overrule the  
22 objection.

23 **BY MR. ORGAN**

24 **Q.** Now, do you know why Mr. Romero didn't copy you on this  
25 email?



**KAWASAKI - DIRECT / ORGAN**

1           **MS. JENG:** Objection. Calls for speculation.

2           **THE COURT:** Sustained.

3           **THE WITNESS:** Do I answer that?

4           **THE COURT:** No. So wait until I say "overruled" and  
5 then you can answer.

6           **THE WITNESS:** All right. Sorry.

7           **BY MR. ORGAN**

8           **Q.** Let me ask you this: Did you have a chance to observe  
9 Mr. Diaz's performance when you supervised him?

10          **A.** Yes. Yes, I did.

11          **Q.** How would you say he performed his duties?

12          **A.** Owen was a great worker. He showed up on time every day.  
13 He wanted to work. He came in. He stayed after. He covered  
14 people's shifts. He gave people breaks. He -- he pretty much  
15 did anything that I asked him to do at the time in what he was  
16 capable of doing.

17          **Q.** Now, at some point in time counsel mentioned that he  
18 received a promotion in her opening. Did you play any role in  
19 a promotion of Owen Diaz?

20          **A.** Yes. So as I moved up with the company, I guess, or  
21 Chartwell or at Tesla, they had asked me: Who would you like  
22 to cover your -- who would you want to be your leads?

23               Because, like I said, I was running the whole overnight  
24 crew for environmental sustainability at that time. They said:  
25 Who do you want in the higher positions? Who do you think is

## KAWASAKI - DIRECT / ORGAN

1 comfortable?

2 And Owen was one of the persons that -- he knew the  
3 elevator. He showed up every day. He wanted to work. So he  
4 was a key candidate to put him in a position to cover that  
5 shift.

6 So I put him in that. I told Victor and Jaime and Ed:  
7 Hey, I want Owen to run my elevators.

8 Q. So --

9 A. It kind of took some -- it alleviated off of me that I  
10 knew the elevators were going to be covered the right way,  
11 so...

12 Q. So you actually recommended Owen for a promotion?

13 A. Correct.

14 Q. And who approved that promotion, do you know?

15 A. I believe Victor, Jaime. One of them approved it. Like I  
16 said, I was the one running the overnight crew, and that's who  
17 I felt I wanted in that position. I just gave my two cents.

18 Now, they can choose to say "no" or they could say "yes,"  
19 and they ended up saying "yes" and he got promoted.

20 Q. So as far as you know, Tesla is the one that approved it;  
21 is that right?

22 A. Correct. Yes, that's correct.

23 Q. All right. So if it had been represented to this jury  
24 that Owen's pay is increased by CitiStaff, as far as you knew,  
25 that actually happened from Tesla; is that right?

**KAWASAKI - DIRECT / ORGAN**

1 **A.** Correct. I mean, I got a pay increase as well when I got  
2 bumped up to the people. And they just said -- Victor and  
3 Jaime said they were going to contact my staffing agency and  
4 tell them to give me more money, so...

5 **MR. ORGAN:** Your Honor, I'd also --

6 **BY MR. ORGAN**

7 **Q.** If you could, look at Exhibit 222.

8 **MR. ORGAN:** And, Your Honor, I believe this is a  
9 stipulated admissible exhibit.

10 **THE COURT:** All right. Hearing nothing, I agree. So  
11 it's admitted.

12 (Trial Exhibit 222 received in evidence)

13 **THE COURT:** And it can be published.

14 **MR. ALEXANDER:** We can publish it, great.

15 (Document displayed.)

16 **BY MR. ORGAN:**

17 **Q.** And so you can see here that it's Victor Quintero is  
18 letting Jaime know and somebody named Nancy Uhlenbrock that  
19 Owen is getting this pay raise; is that correct?

20 **A.** That is correct. That's what the email says.

21 **Q.** And as of this date, 8/17/2015, do you know who Victor  
22 Quintero is working for then?

23 **A.** Tesla.

24 **Q.** Tesla.

25 Okay. Let me ask you, in terms of -- in terms of the

**KAWASAKI - DIRECT / ORGAN**

1 factory, is this a big factory?

2 **A.** Half a million square feet. I believe that's pretty --  
3 pretty damn big to me.

4 **Q.** Okay. If you could -- if you could go to Exhibit 104,  
5 please?

6 (Witness complied.)

7 **Q.** Now, do you recognize this layout that's here on Exhibit  
8 '4?

9 **A.** I vaguely remember. Like I said, I mean, I'm pretty sure  
10 this is just a blueprint, but it looks like the production  
11 line of the factory.

12 **Q.** Okay. And do you see sort of in the middle on the left  
13 side there's something there? "Elevators," do you see that?

14 **A.** Yes.

15 **Q.** Does that fairly and accurately represent where the  
16 elevators were relative to the production floor, at least  
17 whatever part of it is showing here?

18 **A.** Yeah. This was, like, showing the lower floor. Not the  
19 upper floor. But, yes, that is.

20 **Q.** This isn't the whole lower floor. It's just part of it;  
21 is that right?

22 **A.** This is just -- this is just part of the warehouse, and  
23 this is showing the first floor I believe, not the second  
24 floor.

25 **MR. ORGAN:** Your Honor, I would move Exhibit 104 into

1 evidence.

2 **THE COURT:** Any objection?

3 **MS. JENG:** Your Honor, lacks foundation.

4 **THE COURT:** I'm going to overrule the objection. I  
5 think he testified specifically enough with respect to the  
6 placement of the elevator and the other things and the context  
7 of it.

8 So overruled. It will be admitted.

9 (Trial Exhibit 104 received in evidence)

10 **MR. ORGAN:** Thank you, Your Honor.

11 **BY MR. ORGAN**

12 **Q.** In terms of -- tell the jury, if you could, what are the  
13 freight elevators? What are those?

14 **A.** So to me, from my perspective, the freight elevators were  
15 the backbone of Tesla. You had to move material up and down.  
16 If you didn't bring -- I believe on the second floor, it's not  
17 showing, but the battery line is up there where they made the  
18 batteries for the bottom of the cars. So if you didn't move  
19 the product that they needed for that production line up and  
20 down this freight elevator, they would stop production.

21 So I believe it's kind of like the backbone. And that  
22 goes for both elevators. You had to bring material up and  
23 down.

24 And then we also had to bring the recycling down. So if  
25 at any given time you had a backup on recycling or the

## KAWASAKI - DIRECT / ORGAN

1 batteries or whatever product Tesla needed up at that time, you  
2 would stop production and it would put a halt to everything.  
3 It was like a linked chain.

4 Q. So this is a pretty important part of the car-making  
5 process, this elevator?

6 A. It's a key part. I mean, you don't make the batteries,  
7 you don't make the car; right?

8 Q. Right.

9 Okay. If you could, please look at -- what I'd like to do  
10 now is shift gears and fast forward to October 17th of 2015.  
11 Okay? October 17th.

12 If you could, look at Exhibit 235. 235.

13 (Witness complied.)

14 Q. Now, as of this date, what is your position?

15 A. At this date I believe I was, like, the same position. I  
16 was just the lead of the whole overnight environmental  
17 sustainability group, recycling group.

18 Q. And did you receive this document, Exhibit 235?

19 A. What do you mean by "receive this"? Like, from any of you  
20 guys? No, but --

21 Q. No, no.

22 A. I got this email, yes, because my name's on it, yes.

23 Q. That's right.

24 When Owen Diaz sent this, did you receive it?

25 A. Yes.

**KAWASAKI - DIRECT / ORGAN**

1 **Q.** Okay. And just to clarify, back on October 17th of 2015;  
2 right?

3 **A.** Correct.

4 **Q.** Okay.

5 **MR. ORGAN:** Your Honor, I'd move Exhibit 235 into  
6 evidence.

7 **MS. JENG:** No objections.

8 **THE COURT:** It's admitted.

9 (Trial Exhibit 235 received in evidence).

10 **MR. ORGAN:** Can we publish this, Your Honor?

11 **THE COURT:** Yes. Yes.

12 **MR. ORGAN:** Okay.

13 (Document displayed.)

14 **BY MR. ORGAN**

15 **Q.** Now, what was Ramon Martinez's role at this point in time?

16 **A.** So Ramon Martinez was my counterpart, but for the day  
17 shift.

18 **Q.** So he was also a lead?

19 **A.** Correct. He was my counterpart for the day shift.

20 **Q.** Okay. And there are some -- there's some discussion here  
21 in Exhibit 235 about an interaction between Mr. Diaz and  
22 Mr. Martinez. Do you see that? Where he's alleging threats;  
23 right?

24 **A.** Correct.

25 **Q.** You weren't present for that?

## KAWASAKI - DIRECT / ORGAN

1   **A.**   I don't believe -- I might have been on vacation.  It  
2   could have been one of my days off.  I could have been at home  
3   at the time.  I know I got the email, but I believe I wasn't  
4   present.

5           That's why Owen copied me on the email, because that's  
6   what I asked him to do.  Any altercations that he had, I would  
7   ask him to copy me on the email, as well and Victor and whoever  
8   else on the email.

9   **Q.**   Okay.  And then there's a reference here about the  
10  surveillance system.  Does Tesla have -- or when you were  
11  there, does Tesla have a surveillance system?

12  **A.**   Yes, they do.

13  **Q.**   And what does the surveillance system consist of, if you  
14  know?

15  **A.**   So at one point I actually got access to the surveillance  
16  system.  I actually had a Tesla computer.  They gave me a token  
17  to access their mainframe for their computer, for their system.

18           And I would be able to say -- if I was on break and there  
19  was an altercation, I would be able to open up the computer and  
20  look at the cameras and say:  Hey, what's going on?  Or see  
21  what people were complaining about if I was dealing with  
22  something else or at one side of the factory.

23           Like I said, it's a big factory.  So I could be over here,  
24  and it could take me 10 minutes, 15 minutes to get all the way  
25  over here with the altercation at that time.



1 Q. So, but if -- so did the surveillance system capture what  
2 was on the elevators?

3 A. So when I looked at this -- so the surveillance system, it  
4 would only go back so far. So that's only if they gave me  
5 access to go back so far, to rewind the footage and go back so  
6 far.

7 In this incident when he said -- I looked at the camera  
8 system, and all I seen was Owen and -- Owen and Ramon face to  
9 face, and then it bleeped away.

10 So I didn't know anything else, and I let Ed know about  
11 that stuff as well. I don't know if Ed had access to the  
12 cameras. I honestly do not know what he had from Tesla, so...

13 Q. But you at least saw that there was an interaction between  
14 the two of them?

15 A. There was. And, like I said, this was mainly towards  
16 Owen. Owen just put me in there because he knew I did have  
17 access to the cameras.

18 And it did roll back. But, like I said, when I tried to  
19 roll back the footage, it only let me go back so far. And at  
20 the end of that footage, I did see them face to face.

21 And then after that, this was nothing to do with me,  
22 because he sent it to Ed and Ed would take it from there. It  
23 wasn't my deal. I wasn't there that day, so I really didn't do  
24 anything with this matter.

25 Q. So you played no role in investigating it?

## KAWASAKI - DIRECT / ORGAN

1 A. I played no role in this matter per se. All I did, like I  
2 said, I -- the role I played was I told Ed: Hey, this is what  
3 I seen on the camera. And that was a verbal.

4 Q. Now, you had -- but you did have interactions with  
5 Mr Martinez, Ramon Martinez, didn't you?

6 A. Correct. Like I said, he was my counterpart as the day  
7 shift. We would overlap and I would let him know what needed  
8 to be done and what -- how the elevator was going. And if  
9 sometimes the elevator would get backed up for whatever reason,  
10 it would get backed up with batteries or whatever, they would  
11 overload the front of the elevators with batteries and I would  
12 just let them be aware: Hey, this is what you guys need to  
13 catch up on. This is how the overnight shift went.

14 Q. And did you ever hear Mr. Ramon Martinez use the word  
15 *mayate* in Spanish?

16 A. Umm, I heard him say *mayate*. I also heard him say *chongo*  
17 a lot.

18 Q. So you heard *mayate*. What was the other word?

19 A. *Chongo*.

20 Q. *Chongo*? And, again, that's Ramon Martinez; right?

21 A. Correct.

22 Q. How many times did you think you heard Ramon Martinez use  
23 the word *mayate*?

24 A. I can't give you a real count. I don't know. I just know  
25 I've heard them say it. I mean, they're talking to each other

**KAWASAKI - DIRECT / ORGAN**

1 in Spanish and the words get thrown out.

2 So, I mean, I -- I mean, I know Spanish words and I know  
3 curse words, sorry, in Spanish. Don't we all?

4 **Q.** Let me ask you this: When you were walking around the  
5 Tesla factory, did you ever hear the "N" word when you were  
6 walking around?

7 **A.** That word was thrown around a lot honestly. It was a  
8 young crew. They hired a lot of staffing agencies, so a lot of  
9 people had different backgrounds. A lot of people threw that  
10 word around casually a lot, I mean, in passing, whether it's  
11 friendly or fun.

12 I mean, I didn't think nothing of it because it wasn't  
13 thrown towards me, so it wasn't affecting me in any way. I  
14 can't control what other employees do that weren't under my  
15 supervision, so...

16 **Q.** How often would you say you heard this "N" word when you  
17 were walking around?

18 **A.** Daily.

19 **Q.** Daily. Could you tell whether or not these people that  
20 you heard throwing the "N" word around on a daily basis,  
21 whether or not they were Tesla employees or contract employees?

22 **A.** No, I can't -- couldn't tell you that. I don't know. I  
23 don't know.

24 **MR. ORGAN:** No further questions, Your Honor.

25 **THE COURT:** All right.

**KAWASAKI - CROSS / JENG**

1 Cross-examination.

2 **CROSS-EXAMINATION**

3 **BY MS. JENG**

4 **Q.** Good morning.

5 **A.** Good morning.

6 **THE COURT:** Ms. Jeng, you might want to introduce  
7 yourself again to the jury.

8 **MS. JENG:** Oh. Hi, I'm Patricia Jeng. I  
9 representative Tesla in this case.

10 **THE COURT:** And move the mic towards you.

11 **MS. JENG:** Okay.

12 **BY MS. JENG**

13 **Q.** All right. I want to address the last thing you just  
14 testified about, Mr. Kawasaki. You said that you had heard the  
15 "N" word in the factory, right, being used.

16 And the context in which you heard it were people saying  
17 it to each other in a friendly context and not in an aggressive  
18 manner; correct?

19 **A.** That's correct. I mean, that's not my conversation. I  
20 just heard the word thrown around. It's not my conversation to  
21 have. It's not the conversation they're having with me, so I  
22 just kept on pushing.

23 **Q.** And you heard it when people were on their breaks or in  
24 the cafeteria; is that right?

25 **A.** Correct.

1 Q. And you didn't ever hear it used in an offensive or as a  
2 slur; correct?

3 A. Like I said, it's not my conversation. I don't know  
4 what -- if somebody took offense to it or not. It just wasn't  
5 directed towards me. It wasn't at me. I just hear it in  
6 passing, I just keep going. I have my own things to take care  
7 of, so...

8 Q. But you did -- did you believe it was not -- sorry.  
9 You didn't believe it was being used in an offensive  
10 manner any time you heard it; is that right?

11 A. Like I said, it was just heard in passing. I didn't  
12 really think nothing twice of it or anything like that. It  
13 wasn't thrown towards me. It wasn't -- nobody -- I didn't see  
14 anybody getting into an altercation or if -- I just kept going.

15 Like I said, I had a lot on my plate at that time. At  
16 that time, I probably had about 15, 20, 25 people under me. I  
17 mean, I had no time to stop or whatever.

18 It's not even my conversation. Do you stop on the street  
19 when somebody is saying it or anything like that and say, "Oh"?  
20 Get in their conversation? No, right?

21 Q. My question is a little bit different. When you heard  
22 that word being used, you did not hear it ever being used in a  
23 way that you felt was offensive or --

24 MR. ORGAN: Objection. Relevance.

25 THE COURT: Overruled. You can answer.

1           **THE WITNESS:** I can answer?

2           **THE COURT:** Yes.

3           **THE WITNESS:** Yeah. I mean, it wasn't -- the word is  
4 not proper to use anyway, so it's like -- I mean, like I said,  
5 it didn't affect me or anything like that, so I didn't take  
6 offense to that.

7           **BY MS. JENG:**

8           **Q.** Okay. And for those people who you testified you have  
9 heard using the "N" word in the break room or in the cafeteria,  
10 you don't recall who they were; right?

11          **A.** I don't know everybody. We had -- I don't know how many  
12 employees Tesla had at that time or staffing agencies, so...

13          **Q.** Okay. And so you don't know who their employer was;  
14 right?

15          **A.** I do not. I mean, I said I don't know if you're Tesla or  
16 not.

17          **Q.** Okay. And in those times that you heard the "N" word  
18 being used, you know, in a non-offensive manner, do you -- so  
19 no one complained to you about any of those instances; is that  
20 right?

21          **A.** In those of me overhearing it? No.

22          **Q.** Okay. And you don't know whether any complaints were  
23 brought by someone else and immediately addressed; right?

24          **A.** No. I don't know. Like I said, if it didn't have  
25 anything to do with me or my group, no. I don't know anything

1 else that any other part of Tesla did.

2 Q. Okay. So if there was another worker at the factory who  
3 was offended hearing that word, they could have reported it;  
4 correct?

5 A. Correct.

6 Q. But you wouldn't have known about that; right?

7 A. No.

8 Q. Okay.

9 A. There's not a Tesla newsletter saying every case that  
10 somebody reports.

11 Q. That's right.

12 Okay. I want to talk about the incident with Judy  
13 Timbreza. You testified earlier I think that as of July 31st,  
14 2015, you were Owen's supervisor; is that right?

15 A. Correct. I was the lead of elevator, correct.

16 Q. Are you aware that Owen was actually a lead at that point  
17 already?

18 A. Vaguely. If he was, he was. I don't -- I don't remember.

19 Q. So if Owen was a lead already and you were a lead, were  
20 you still his supervisor at that point?

21 A. Correct. Correct.

22 Q. Okay. You guys were in the same position, though?

23 A. Correct. I could have been the elevator lead. At that  
24 time I could have already been bumped up to overnight shift  
25 lead. I believe if he was a lead at that time, then I was

1 already bumped up to the overnight shift lead.

2 Q. Okay. So if Owen was a lead at that time, you would have  
3 been on a different shift; correct?

4 A. I would have been on a different shift, but we would  
5 overlap. Shifts would overlap.

6 Q. So you guys were both leads, but just on different shifts  
7 that overlapped; correct?

8 A. Like I said, I could have been the overnight shift lead at  
9 that time of the whole environmental sustainability group.

10 Like I said, if he was already bumped up to lead at that time,  
11 then I was already bumped up to the overnight shift lead.

12 Q. All right.

13 Okay. So in June 2015, you became aware of the verbal  
14 altercation between Judy and Owen; correct?

15 A. Correct.

16 Q. And you became aware of this incident when someone called  
17 you; is that right?

18 A. Correct.

19 Q. At that time you were driving around in another area; is  
20 that right?

21 A. Yeah, more than likely. I think I was on a different  
22 location, correct.

23 Q. And when you got this call, you came to the area where  
24 Owen and Judy were; right?

25 A. Correct. I immediately came to the elevators.



**KAWASAKI - CROSS / JENG**

1 Q. Okay. So you came after the altercation; is that right?

2 A. Correct.

3 Q. I'm sorry?

4 A. Correct.

5 Q. Okay. So you didn't actually hear any racial slurs being  
6 said; correct?

7 A. I did not hear any racial slurs from me, but I didn't hear  
8 it my personal self. Is that what you're asking?

9 Q. Okay. And what you did was immediately separate the two  
10 men; right?

11 A. Correct.

12 Q. And then you previously testified you wrote an email to Ed  
13 Romero about the incident; is that right?

14 A. Correct.

15 Q. Okay. And the email that you wrote to Ed was based on  
16 what you were told happened between Judy and Owen, not based on  
17 what you witnessed; correct?

18 A. Correct.

19 Q. Okay. And then I think you previously testified that  
20 after you sent the email to Ed about Judy and Owen, it was out  
21 of your hands; is that right?

22 A. Correct. It was to the higher ups above me.

23 Q. Now, you testified a little bit earlier about your  
24 investigation into Owen's allegations about Judy's comments; is  
25 that right?

**KAWASAKI - CROSS / JENG**

1     **A.**    I don't understand the question.

2     **Q.**    Were you testifying earlier that you investigated Owen's  
3   complaint about Judy?

4     **A.**    I said I talked to witnesses around.  I didn't do any,  
5   like -- I mean, if you want to call that investigation, I  
6   guess.  I talked to the witnesses that were around.

7     **Q.**    Right.  It wasn't your job to do the investigation; is  
8   that right?

9     **A.**    It was my job to separate the people in the altercation.  
10   It was my job to make sure nothing happened or anybody got  
11   hurt.

12   **Q.**    Okay.  So it was your job to separate the two men, but it  
13   wasn't your job to investigate or look into what actually  
14   happened; is that right?

15   **A.**    I don't -- I mean, like, I -- I don't -- I'm having,  
16   sorry, a tough time understanding your question right now.

17   **Q.**    Well, it wasn't your role to do an investigation into what  
18   had happened between Mr. Diaz and Mr. Timbreza --

19   **A.**    So my --

20   **Q.**    -- that correct?

21   **A.**    -- role was the overnight --

22           **THE COURT:**  Mr. Kawasaki, if you wait for Ms. Jeng to  
23   finish her question, then that will help you formulate your  
24   answer.

25           **THE WITNESS:**  Okay.

1 **BY MS. JENG**

2 **Q.** Well, is it your belief that an investigation into  
3 incidents like this is above your pay grade?

4 **A.** Not at that time, no.

5 **Q.** It was not above your pay grade?

6 **A.** Who else was going to figure out what happened that night  
7 besides me; right? I was the overnight shift lead. There was  
8 nobody else higher than me for our group there for  
9 environmental sustainability.

10 **Q.** So it's your testimony that it was your -- it was not  
11 above your pay grade and it was your role to do the  
12 investigation?

13 **MR. ORGAN:** Objection. Compound, Your Honor.

14 **THE COURT:** Overruled. You can answer, if you can.

15 **THE WITNESS:** So can you ask that question again?

16 Sorry. I got lost and it was confusing.

17 **BY MS. JENG**

18 **Q.** Sure. It's your testimony that it was your role to do the  
19 investigation into what had happened between the two men?

20 **A.** It's my testimony to say that it was my job to figure out  
21 what happened that night and make a decision on how I was going  
22 to separate these people or send one home.

23 **Q.** I understand that, but was it your role to do the  
24 investigation?

25 **A.** At that night? Yes.

**KAWASAKI - CROSS / JENG**

1 **Q.** Okay.

2 **MS. JENG:** If I could direct the Court and the witness  
3 to his deposition testimony Page 50, Line 7 through 18.

4 **THE COURT:** 60?

5 **MS. JENG:** 50.

6 **THE COURT:** I'm sorry. And what lines?

7 **MS. JENG:** Lines 7 through 18.

8 **MR. ORGAN:** It's unclear, Your Honor. Vague and  
9 ambiguous.

10 **THE COURT:** Overruled. That's a question that can be  
11 answered.

12 So right at the moment you've directed the -- your  
13 attention, Mr. Kawasaki, is directed to that page and  
14 line numbers.

15 **THE WITNESS:** I see.

16 **THE COURT:** Go ahead, Ms. Jeng.

17 **MS. JENG:** May I read the transcript, Your Honor?

18 **MR. ORGAN:** For context can we have down to Line 21,  
19 Your Honor?

20 **MS. JENG:** Sure.

21 **THE COURT:** Yes, that's fine.

22 **MS. JENG:** No objections.

23 **BY MS. JENG**

24 **Q.** (As read):

25 **"QUESTION:** You mentioned earlier that it wasn't your

**KAWASAKI - CROSS / JENG**

1 role to do an investigation into what had happened  
2 between Mr. Diaz and Mr. Timbreza; is that correct?

3 **"ANSWER:** Correct. That's not -- that's above my pay  
4 grade. That wasn't me, so --

5 **"QUESTION:** And when you say above your pay grade, you  
6 expected Ed Romero and Jaime and maybe Victor to do  
7 any investigation into what happened; is that correct?

8 **"ANSWER:** That's their job, is it not? That's not my  
9 job. Like I said, I don't have the ability to  
10 reprimand or do an investigation on people. That's  
11 not --

12 **"QUESTION:** Sure.

13 **"ANSWER:** -- my position. My position was just to  
14 make sure the night shift ran smoothly, we had enough  
15 staffing."

16 Mr. Kawasaki, you don't know whether Ed Romero or anyone  
17 else spoke with the witnesses; correct?

18 **A.** I do not.

19 **Q.** Okay. You don't know what steps they took to conduct any  
20 investigation; is that correct?

21 **A.** I do not.

22 **Q.** Okay. I think you testified earlier that the incident  
23 between Judy and Owen was on a Friday; correct?

24 **A.** I don't remember if it was a Friday. I can look in the  
25 calendar. It could have been a Thursday or Friday. That's

**KAWASAKI - CROSS / JENG**

1 what I said. I don't -- it could have been.

2 **Q.** Well, you sent the email to Ed Romero on the same day as  
3 the incident; is that right?

4 **A.** Correct.

5 **Q.** Okay. If I could have you look at Exhibit 218. I believe  
6 this is previously admitted; or if not, it's stipulated.

7 **A.** 218?

8 **Q.** Yes?

9 **A.** I don't have 218.

10 **MS. JENG:** Could I show the witness a copy of 218?

11 **THE COURT:** It's a stipulated exhibit?

12 **MS. JENG:** Yes.

13 **THE COURT:** So if you have it, you can show it.

14 (Document displayed.)

15 **BY MS. JENG:**

16 **Q.** Mr. Kawasaki, do you see that the email that you sent to  
17 Ed is dated July 31st, 2015; correct?

18 **A.** Correct.

19 **Q.** And do you see that it was sent on a Friday?

20 **A.** I see that, yeah.

21 **Q.** Okay. So does this refresh your recollection as to when  
22 the incident between Judy and Owen occurred?

23 **A.** So it was a Friday.

24 **Q.** Okay. And so if July 31st was a Friday, Monday would be,  
25 what, August 3rd?

1 A. The 3rd or 4th. One of those. Probably, yeah, 2nd or  
2 3rd.

3 Q. Now, in your email you didn't specify any specific remarks  
4 that were racial in nature; is that right?

5 A. I put "racial in nature," correct.

6 Q. Okay. And then you testified that you spoke -- the next  
7 time you spoke with Ed was that following Monday; is that  
8 right?

9 A. Correct.

10 Q. Okay. So that would be August 3rd; is that right?

11 A. That is correct.

12 Q. Okay. So August 3rd is the date you met with Ed in the  
13 morning; is that accurate?

14 A. That is correct.

15 Q. Okay. And your testimony today is that you told Ed more  
16 specifically about the comments that Owen told you were being  
17 made --

18 A. Correct.

19 Q. -- on that Monday; is that right?

20 A. That's correct.

21 Q. So prior to Monday, you had not spoken to Ed?

22 A. No. Other than this email out to all of them, yes, I did  
23 not.

24 Q. Okay. So the first day that Ed -- you would have told Ed  
25 about any specific remarks would have been August 3rd on that

1 Monday; correct?

2 **A.** So it could have been. Ed could have gave me a call. I'm  
3 not too sure what -- over the weekend what happened. Ed could  
4 have called me. We could have talked about it before then. I  
5 know we had a meeting Monday.

6 **Q.** Okay. But you don't have any specific recollection of  
7 talking to Ed between your email and that Monday; correct?

8 **A.** Not from seven years ago, no.

9 **Q.** Okay. And August 3rd, the day -- the first time you  
10 talked to Ed after you sent the email, you recall Ed telling  
11 you that a decision had been made regarding the next steps as  
12 to the Judy incident; correct?

13 **A.** That's what Ed said, yes, correct.

14 **Q.** Ed told you that a decision had been made; correct?

15 **A.** Yeah, from him and Jaime and Victor.

16 **Q.** Okay. And that Monday, which is the day you talked to Ed,  
17 you had been told that Judy's position would be filled;  
18 correct?

19 **A.** What do you mean? No, I wasn't told that it would be  
20 filled. I was told that they made a decision and the decision  
21 was that Ed came with a paper stating that they were going to  
22 write Judy up. I don't know what you mean by "filled."

23 **Q.** Well, did someone ask you on that Monday that you would  
24 need to fill Judy's position, that he would be replaced?

25 **A.** I believe -- I'm not sure. Maybe Judy was coming back



1 that Tuesday.

2 I believe I sent emails out stating that: Hey, what --  
3 what is going to happen? What are you guys doing? What  
4 recourses are you guys taking in this matter?

5 I believe they were due to come back and work the same  
6 shift together at that time, Owen and Judy, so...

7 **Q.** Okay. So Mr. Timbreza actually was off of work Monday and  
8 Tuesday; right?

9 **A.** I -- I don't -- I can't answer that question because I  
10 don't remember.

11 **Q.** Okay.

12 **MS. JENG:** Can I show the witness his deposition  
13 transcript, Page 92, Line 4 through 20?

14 **THE WITNESS:** You said page what?

15 **MS. JENG:** Page 92, Line 4 through 20.

16 **THE WITNESS:** Okay. 94, Line 2 through 20.

17 **BY MS. JENG**

18 **Q.** Are you there?

19 **A.** I'm there.

20 **Q.** So that Monday is when you were told that Judy was not  
21 coming back; correct?

22 **A.** You said the deposition Line 2 through 4, Page 94?

23 **Q.** Sorry. Page 92, Lines 4 through 20.

24 **A.** Okay. All right. I asked you Page 90- -- yeah.

25 Okay. Can you ask your question again?

1 Q. Sorry. I missed that.

2 A. Can you ask your question again?

3 Q. Yes. So Monday is when you were told that Judy was  
4 actually not coming back; is that right?

5 A. I believe -- what do you mean by "not coming back"? Like  
6 not working for us? Not working for his staffing company  
7 anymore? Like, they laid him off?

8 Q. Just not coming back.

9 A. I don't think he was scheduled to work that Monday. I  
10 believe he was scheduled to work that Tuesday. Maybe. I don't  
11 know. I believe -- I couldn't tell you what the schedules were  
12 from seven years ago. I don't have a record of schedules.

13 Q. Well, you were deposed in this case a couple of years ago;  
14 right?

15 A. Correct.

16 Q. And so at the time of your deposition, that was closer in  
17 time to the events of this case than it is now; right?

18 A. Yeah. Five years from the event you guys gave me a  
19 deposition, yeah. Sure.

20 Q. So your memory would be better then than it is now of the  
21 events from 2015; correct?

22 A. Possibly. I mean, this is what you guys gave me.

23 Q. So if you testified in 2019 that you were told Judy is not  
24 coming back, do you have any reason to believe that that wasn't  
25 true?

**KAWASAKI - CROSS / JENG**

1 **A.** Like, I believe he's not coming back. Like, he could have  
2 been off the next two days. I -- I don't understand your  
3 question.

4 Like, you're saying "not coming back." Like, what do you  
5 mean by "not coming back"? He wasn't laid off at this  
6 situation at this point in time. He wasn't laid off from  
7 coming back to Tesla. Nobody --

8 **Q.** Well, you had assumed -- well, you were told that -- you  
9 were told to fill the elevator position, and so you had assumed  
10 that Judy is not coming back; correct?

11 **A.** Maybe for the night, yeah. Fill the elevator position.  
12 I'm sure he wasn't coming back for the night. I sent him home.

13 Maybe Ed called him and said, hey, he wasn't coming the  
14 next day. I don't -- I don't remember that.

15 **Q.** So if he was off Monday and Tuesday, you also said he  
16 didn't come back that following Wednesday; correct?

17 **A.** I believe he worked Wednesday through Sunday. I believe.  
18 I mean, I don't know.

19 Like I said, I can't give you an accurate schedule what  
20 his schedule was. I can't give you that answer if I don't know  
21 it.

22 **MS. JENG:** All right. Your Honor, can I read the  
23 portion of the transcript that I have shown the witness?

24 **THE COURT:** You may. I'm not sure there is a question  
25 at the end of it.

1 MS. JENG: Okay.

2 BY MS. JENG

3 Q. (As read)

4 "QUESTION: Okay. Did you work Sunday?

5 "ANSWER: I did work Sunday.

6 "QUESTION: Did Mr. Timbreza work that day?

7 "ANSWER: I believe so, yeah. Yeah. He worked up  
8 until Monday the last day I seen him. He -- so he had  
9 Monday, Tuesday off.

10 "QUESTION: Okay.

11 "ANSWER: Right. So he worked Wednesday, Thursday,  
12 Friday, Saturday, Sunday. He had Monday, Tuesday off.  
13 He didn't come back. They -- that's on Monday. They  
14 told me that he's not coming back.

15 "QUESTION: Okay. And that's --

16 "ANSWER: Or they told me to fill the elevator  
17 position, so I assumed he's not coming back. They  
18 told me: You need to find somebody on your shift that  
19 can cover the elevator. And that's where I assumed  
20 he's not coming back. And then he didn't come back  
21 that following Wednesday."

22 Do you remember testifying to this at your deposition?

23 A. I did if it's at my deposition, yeah. I see it.

24 Q. Okay.

25 THE COURT: Is there anything that's inconsistent

1 between what you said here and what you've already said in your  
2 testimony?

3           **THE WITNESS:** Like I said, the days -- these could be  
4 the right days. Like I said, they would have more accurate  
5 schedule of the days that he actually worked from his paychecks  
6 from his company. Like I said, I had so many people under me.

7           Yeah, I probably ended up working that Sunday because we  
8 sent him home that Friday. And maybe Ed made the decision to  
9 say: Hey, he's not coming back until the investigation is  
10 done. So I ended up probably having to cover that shift  
11 Sunday.

12           I cannot really tell you the true answer because it was  
13 from seven years ago. So, like I said, I was overnight shift.  
14 If we didn't have somebody, if the staffing agencies didn't  
15 send us anybody in that short manner, I would have to cover the  
16 shifts. That was a part of my job as well. So, say, somebody  
17 called in sick, I would have to fill that position.

18 **Q.** So you really have no personal knowledge about what  
19 happened to Judy Timbreza; is that right?

20 **A.** Other than the recollection of him getting written up from  
21 whatever Ed brought from his company. I know eventually he got  
22 laid off; but other than that, that's not -- no, I don't. Like  
23 I said, I know he got written up because of this incident and  
24 that came straight directly from Ed Romero and nextSource. It  
25 was the nextSource paperwork that they had him sign.

1 Q. Okay. So nextSource had Judy sign some discipline; is  
2 that correct?

3 A. Sorry. That was Ed. That is correct. That was Ed and Ed  
4 worked for nextSource at that time.

5 Q. Okay. Ed Romero --

6 A. Ed Romero, yes.

7 Q. -- worked for nextSource at that time; right?

8 So I'll turn your attention again to Exhibit 235.  
9 Actually, I think this is Plaintiff's Exhibit 30 so it was  
10 previously admitted.

11 A. Exhibit 30?

12 Q. Yes.

13 A. I don't have that.

14 Q. Well, we'll show it on the screen.

15 A. Okay.

16 THE COURT: And that's a stipulated exhibit?

17 MS. JENG: Yes. It was previously admitted, I  
18 believe.

19 THE COURT: It hasn't been previously admitted. But  
20 if it's stipulated, it will be admitted now.

21 (Trial Exhibit 235 received in evidence).

22 MR. ORGAN: Which exhibit is coming in?

23 THE COURT: 235.

24 MR. ORGAN: I think we already admitted that.

25 MS. JENG: They are duplicates, so...

1           **MR. ORGAN:** Okay.

2           (Document displayed.)

3           **BY MS. JENG:**

4           **Q.** You recall receiving this email on or around October 17,  
5 correct, in 2015?

6           **A.** Yeah. I got the email because my name's on it, so I did  
7 get the email.

8           **Q.** So did you understand that Owen was claiming Ramon to be  
9 yelling at him saying things like: You have a problem with me?  
10 Why are you telling me who his supervisor is?

11          **A.** That's -- that's what it says in the email, yeah.

12          **Q.** And in this email Owen doesn't mention any racial slurs  
13 that Ramon directed at him; correct?

14          **A.** Correct.

15          **Q.** Okay. And you mentioned you did check the surveillance of  
16 this incident; is that right?

17          **A.** I did, yes.

18          **Q.** Okay. And you mentioned that it didn't go back that far?

19          **A.** It only went back a certain amount of time. So, like I  
20 said, maybe I didn't have full access with my token or what  
21 they gave me, what Tesla had given me.

22               Maybe they could have went back farther, but from my  
23 access advantage, it only went back a certain amount of time.  
24 I can't give you as much time as it went back, but it only went  
25 back a certain amount of time and then the feed stopped.

1 Q. Okay. And you don't know how much access Tesla had to the  
2 surveillance; right?

3 A. It's not my surveillance. I just know what I had access  
4 to.

5 Q. Okay. And you also previously testified that, you know,  
6 you were off of work at the time you got this email; correct?

7 A. Yeah. I --

8 Q. And so it was Ed Romero that, you know, handled this  
9 email?

10 A. This was directed to Mr. Romero. I was just cc'd on it at  
11 the time, like I said.

12 And if you look at the bottom of the email, Owen is  
13 telling Ed that I have access to the cameras. I don't know if  
14 Ed had access to the cameras. I don't know what they actually  
15 gave Ed access-wise.

16 Q. So you had no role in this matter?

17 A. I forwarded -- I told Mr. Romero. I believe I talked to  
18 him. He called me on this, and I believe I talked to him and  
19 said: Hey, I just seen him face to face. That's all the  
20 camera shows me is them face to face.

21 Since the cameras don't have any audio, I don't know what  
22 altercation happened before that or how it happened.

23 Q. So because you weren't involved in this, you weren't aware  
24 that Ramon had actually complained about Owen first; is that  
25 right?



1 A. No. I don't know anything about that.

2 Q. And you never heard Ramon -- Ramon Martinez's side of the  
3 story; is that right?

4 A. No. I was -- this knowledge is nothing to me. This was  
5 just like I said. I was added onto the email saying: Hey, Tom  
6 has access to the cameras if you want to look. And I looked.  
7 And that's all I seen and that's all I told Ed, was all I seen  
8 was them face to face. That's all the camera showed me.

9 It didn't show me how the altercation happened before  
10 that. It didn't show me what happened, what events led up to  
11 that or any of that. It just showed me that they were face to  
12 face within close proximity of each other and then the cameras  
13 cut off.

14 Q. Okay.

15 A. So --

16 Q. Okay.

17 A. -- other than that, I have no knowledge of what happened  
18 after this or what they did with this situation.

19 Q. You were employed by Chartwell while assigned to Tesla; is  
20 that right?

21 A. Correct.

22 Q. And you were still employed by Chartwell when you became a  
23 lead at Tesla; is that right?

24 A. Correct.

25 Q. And so as a lead for Chartwell, you were able to recommend

1 a promotion for Owen; is that right?

2 **A.** Correct.

3 **Q.** Now, it was Ed Romero who took your suggestion and  
4 promoted Owen to the lead position; is that right?

5 **A.** I sent the -- I actually talked to Victor, Jaime and Ed in  
6 that situation. They all asked me who did you want?

7 **Q.** Okay. And do you remember Ed promoting Owen to the lead  
8 position?

9 **A.** If it was Ed, it was Ed. Like I said, it was a decision  
10 they all made because they asked me who I wanted in my lead  
11 positions.

12 **Q.** And you testified that Ed was a nextSource employee; is  
13 that right?

14 **A.** Ed was a nextSource employee, to my knowledge. I know he  
15 eventually became a full-time Tesla employee. I just don't  
16 know when.

17 **Q.** Okay. And, also, as a lead employed by Chartwell you were  
18 able to train Owen Diaz; is that right?

19 **A.** Correct.

20 **Q.** Last question. You were never employed by Tesla; is that  
21 right?

22 **A.** Never.

23 **MS. JENG:** No further questions.

24 **THE COURT:** Any redirect?

25 **MR. ORGAN:** Just a couple, Your Honor.

**KAWASAKI - REDIRECT / ORGAN**

1 If you could pull up Exhibit 38?

2 And, Your Honor, I think Exhibit 218 got put in. It's a  
3 duplicate of Exhibit 38. I don't know if you -- but I'd like  
4 Exhibit 38.

5 **THE COURT:** Well, why don't we use -- I don't want to  
6 have duplicate exhibits.

7 **MR. ORGAN:** 38 is already in. Ms. Jeng brought in a  
8 new exhibit, which is identical to the one that had already  
9 been admitted.

10 **THE COURT:** Okay. So this is -- this is Exhibit --  
11 what's the exhibit that's already in?

12 **MR. ORGAN:** 38, Your Honor.

13 **THE COURT:** Okay.

14 **MR. ORGAN:** And if we can show this to the jury?

15 **THE COURT:** Yeah.

16 (Document displayed.)

17 **REDIRECT EXAMINATION**

18 **BY MR. ORGAN:**

19 **Q.** So the date on that Exhibit 38, this is the altercation  
20 between Timbreza and Mr. Diaz, is July 31st; correct?

21 **A.** Correct.

22 **Q.** Now, Ms. Jeng on cross asked you whether -- she suggested  
23 to you that Mr. Diaz was a lead at that point in time. Do you  
24 remember that?

25 **A.** Yes.

1 Q. If you look at Exhibit 222.

2 MR. ORGAN: Also in evidence, Your Honor, if we could  
3 show that to the jury.

4 (Document displayed.)

5 BY MR. ORGAN

6 Q. And Exhibit 222 is from Victor Quintero from Tesla  
7 manager. And he says (as read):

8 "Be aware of the following changes effective  
9 today 8/17/15."

10 Correct?

11 A. Correct.

12 Q. So the change of Mr. Diaz becoming a lead didn't take  
13 effect until 8/17/15; correct?

14 A. That is correct.

15 Q. So that would be misleading to the jury if someone were to  
16 suggest that on July 31st Mr. Diaz was a lead; correct?

17 A. Correct.

18 MS. JENG: Objection. Argumentative.

19 THE COURT: Sustained.

20 BY MR. ORGAN

21 Q. You mentioned something about you saw the write-up for  
22 Mr. Timbreza.

23 A. Uh-huh.

24 Q. Was that a write-up that said "You're terminated"?

25 A. No. That was a write-up saying that he had -- they had

1 given him a verbal write-up. So Ed came with nextSource  
2 paperwork and said: Hey, three write-ups and then you're  
3 terminated. That was the standard for him.

4 So they wrote him up for this situation, which was his  
5 first verbal warning. I believe the second one was a minor  
6 suspension, or something like that, a couple days off, or  
7 whatever it was, if he had another altercation. And then the  
8 third one was automatic termination.

9 Q. And the write-up, did that say something about the racial  
10 nature of the --

11 A. Yes. I believe it had in it a racial slur of a racial  
12 nature in that write-up and Judy signed it.

13 Q. So Mr. Romero, did he sign the write-up?

14 A. I believe so.

15 Q. So Mr. Romero, when he signed the write-up, knew that  
16 there were -- there was a racial component; correct?

17 A. Correct.

18 Q. And they took action against Mr. Timbreza based on that;  
19 right?

20 A. Correct.

21 MS. JENG: Objection. Calls for speculation.

22 MR. ORGAN: He saw the write-up, Your Honor.

23 THE COURT: Are you referring to that write-up?

24 MR. ORGAN: Yeah.

25 THE COURT: All right.

1           **MR. ORGAN:** Yeah.

2           **THE COURT:** All right. So let's be specific.

3           **MR. ORGAN:** Took action in the form of a write-up.

4           **THE COURT:** Okay. You can answer that question.

5           **THE WITNESS:** Correct.

6   **BY MR. ORGAN**

7   **Q.** So when Mr. Romero said that the racial things were not  
8 corroborated, that was false, wasn't it?

9           **MS. JENG:** Objection. Objection. Calls for  
10 speculation. Lacks foundation.

11          **THE COURT:** Sustained.

12          **MR. ORGAN:** No more questions, Your Honor.

13          **THE COURT:** Anything else? Ms. Jeng?

14          **MS. JENG:** No, Your Honor.

15          **THE COURT:** Mr. Kawasaki, you can step down. You're  
16 excused.

17          **THE WITNESS:** Do I need to stay here or can I go?

18          **THE COURT:** You get to go.

19          **THE WITNESS:** Okay. Perfect. Thank you.

20       (Witness excused.)

21          **THE COURT:** Ladies and gentlemen, why don't we take  
22 our second break of the morning and we'll be back at 12:30.

23       (Proceedings were heard out of presence of the jury:)

24          **THE COURT:** Please be seated for a second.

25       Just a couple of things before we go further in this

1 trial.

2 First, Mr. Organ, you're wandering a fair amount from the  
3 podium and that may be a natural thing for you, but don't,  
4 please. I don't want you as close to the jury as you have  
5 been. So stay within arm's length of the podium. You can  
6 wander behind if you want to walk backwards, but don't walk  
7 forwards, please.

8 **MR. ORGAN:** Okay.

9 **THE COURT:** Second of all, if you haven't figured out  
10 the exhibits yet and what's duplicate and what's not, sort that  
11 out because the record -- I think, Ms. Jeng, you referred to  
12 Exhibit 30, which was the same as another exhibit, 235 or  
13 something. And the record is going to be unclear to the Court  
14 of Appeals. It's going to be confusing to the jury. So use  
15 just one exhibit that expresses whatever it is you want not to.

16 And, third, when you're using a deposition, if you're  
17 going to -- if what you want to do is refresh somebody's  
18 recollection as to what they said, let him read it and ask him  
19 whether it refreshes his recollection. If you're trying to  
20 attack his credibility and it's a direct attack, ask him at the  
21 end of it which is true and which isn't.

22 I'm not sure that -- I think both of those were more in  
23 the line of refreshing recollection. Ask that question. You  
24 can read the testimony of a party to them in the way that you  
25 were doing and not ask any questions; but as to regular

witnesses, you need to ask a question at the end of it.

All right. See you in ten minutes.

(Whereupon there was a recess in the proceedings

from 12:17 p.m. until 12:33 p.m.)

(Proceedings were heard in the presence of the jury.)

**THE COURT:** All right. Please be seated everybody.

**MR. ORGAN:** We can take our masks off if we're vaccinated if we're talking; is that right?

**THE COURT:** That is the rule, Mr. Organ.

And who is the next witness?

**MR. ORGAN:** Ed Romero, Your Honor.

**THE COURT:** All right. Ms. Davis, could you swear the witness, please.

**EDWARD ROMERO,**

called as a witness for the Plaintiff, having been duly sworn, testified as follows:

**THE WITNESS:** I do.

**THE CLERK:** Thank you.

**THE COURT:** So, Mr. Romero, if you would state your name and then spell it for the court reporter, please.

**THE WITNESS:** Can I lower the mask?

**THE COURT:** If you're vaccinated, you may take off your mask, yes.

**THE WITNESS:** Edward Romero. E-D-W-A-R-D, last name R-O-M-E-R-O.



1           **THE COURT:** Thank you.

2           Mr. Organ, you may proceed.

3                           **DIRECT EXAMINATION**

4           **BY MR. ORGAN**

5           **Q.** Good afternoon, Mr. Romero. I wrote down "good morning,"  
6 but we're a little behind.

7           So good afternoon, Mr. Romero. How are you doing?

8           **A.** Well, I'm okay. Physically I've got some issues.

9           **Q.** You started working at Tesla on July 5th of 2015; is that  
10 correct?

11          **A.** That sounds correct.

12          **Q.** And you worked at the Tesla factory as a direct employee  
13 of Tesla from approximately October 12th of 2015 until August  
14 of 2017; is that right?

15          **A.** That sounds correct.

16          **Q.** You were a supervisor for Tesla; correct?

17          **A.** During that -- I think since December -- I mean, December  
18 of '15, I worked for Tesla.

19          **Q.** Well, you were -- and you were a supervisor of Owen Diaz,  
20 weren't you?

21          **A.** Yeah. I got hired as a contract employee through  
22 nextSource when I started at Tesla. I got interviewed by  
23 Tesla, and I started as an employee of Tesla in October.

24          **Q.** Okay. So first you were a contract employee through which  
25 company?

1 A. nextSource.

2 Q. nextSource. So you were a contract employee through  
3 nextSource, and then you became a direct employee of Tesla;  
4 is that correct?

5 A. Correct.

6 Q. And that transition took place in October; correct?

7 A. Correct.

8 Q. Okay. So as of October of 2015, you were a direct  
9 employee of Tesla; right?

10 A. From October, yes.

11 Q. You were Mr. Owen Diaz's supervisor; correct?

12 A. Uh-huh. Yes.

13 Q. You were supervising the elevators; right?

14 A. And I was also supervising the janitorial service.

15 Q. And the janitorial services?

16 A. Right.

17 Q. Okay. Let's go back just a little bit. When you started,  
18 Victor Quintero -- you interviewed with Victor Quintero; is  
19 that correct?

20 A. Yes.

21 Q. And he told you that your working through nextSource  
22 could lead to a permanent job with Tesla; right?

23 A. He said that many, many employees -- many people went in  
24 through agencies and some got hired, you know, to work at  
25 Tesla.

1 Q. When you were a contract employee at Tesla -- at the Tesla  
2 factory working through nextSource, you reported to Victor  
3 Quintero; correct?

4 A. I reported to nextSource.

5 Q. But your manager at the plant was actually Victor  
6 Quintero; correct?

7 A. Well, we looked at him like the manager over everybody,  
8 you know, because he was in charge of that department.

9 Q. He was in charge of everybody, including you, in that  
10 department; right? And that was true even when you were a  
11 contract employee for nextSource; right?

12 A. Well, we looked at him as the man in charge of those  
13 departments, so...

14 Q. So Victor Quintero was in charge; right?

15 A. He was in charge of his departments, yes.

16 Q. Yes.

17 A. Uh-huh. Yes.

18 Q. And that department is where you worked; right?

19 A. Yes.

20 Q. Your job duties as contract services supervisor included  
21 overseeing all the cleaning contractors for the facility in the  
22 power train and lower production; correct?

23 A. Correct.

24 Q. And as the contract services supervisor, you had oversight  
25 functions over the entire factory; correct?

1 A. You're talking about when I was a Tesla employee?

2 Q. When you were a Tesla employee, yes.

3 A. Yeah.

4 Q. A direct Tesla employee.

5 A. Yeah. Yeah. The assignments were divided up. Okay?

6 When I was -- when I was working for Tesla, there was two of us  
7 overseeing the cleaning of the factory. Okay?

8 Q. Okay.

9 A. And I was overseeing the two -- two industrial elevators.

10 Q. Okay. And even when you were a contract employee for  
11 nextSource working for Tesla, even then you had some  
12 oversight function relative to the elevators; correct?

13 A. It was minimal. When I got hired in October, they told me  
14 that they wanted to train me to help in the elevator service.  
15 Okay?

16 Q. Yeah.

17 A. All right. And there was another person in charge. Jaime  
18 Salazar was really the direct supervisor of the elevators  
19 during that transition time. So I was working with him.

20 Q. Jaime Salazar was sort of people's direct supervisor, and  
21 then you had sort of a dotted-line supervisor role; is that  
22 right?

23 A. Yes. Yes.

24 Q. Okay. And I want to turn your attention back now to  
25 July 31st of 2015. Okay?

1 A. Okay.

2 Q. Judy Timbreza, he's working with the elevators at that  
3 point; is that correct?

4 A. That's what I remember, yes.

5 Q. And just so we're clear for the jury here, Judy Timbreza  
6 is a male; correct?

7 A. Yes.

8 Q. And Tom Kawasaki is an elevator lead at that point?

9 A. From what I remember, yes.

10 Q. And Owen Diaz is an elevator operator; right?

11 A. I'm not sure if he had already been promoted to a lead at  
12 that time. I don't remember.

13 Q. Okay. But at some point in time you were informed that he  
14 was being promoted by Victor Quintero; correct?

15 A. I don't remember being informed directly.

16 Q. Okay. Did you receive an email from Victor Quintero  
17 saying that Owen Diaz was getting a promotion to elevator lead?

18 A. I don't remember that email. If you have it there, I  
19 could see it.

20 Q. Okay. Well, I'll pull it up.

21 Let's go back to Judy Timbreza. At some point in time you  
22 get an email from Tom Kawasaki, correct, about an incident  
23 between Judy Timbreza and Owen Diaz; right?

24 A. I think I recall that -- that Owen had complained about --  
25 about some remarks that were made or something.

1 Q. Right.

2 A. I remember -- I remember seeing an email from Timbreza.

3 Q. And if you turn to Exhibit 38 in that notebook there?

4 Yeah, turn to 38.

5 MR. ORGAN: And, Your Honor, I believe this is in  
6 evidence.

7 THE COURT: It is.  
8 (Document displayed.)

9 MR. ORGAN: Is it published?

10 BY MR. ORGAN

11 Q. Exhibit 38, this is the email you got from Tom Kawasaki;  
12 correct?

13 A. I think so, yes.

14 Q. And in it he says (as read):

15 "Comments being made towards him, Owen Diaz, that  
16 are racist in nature."

17 Do you see that?

18 A. I do.

19 Q. And also, if you look at that, it says "Elevator 2  
20 employee Owen." It doesn't say "elevator lead," does it?

21 A. It doesn't.

22 Q. And isn't it true that Owen actually didn't get the  
23 promotion until later in August? Do you remember that?

24 A. No. I don't remember the date.

25 Q. Okay.

1           **MR. ORGAN:** If we could show Exhibit 222, Your Honor,  
2 which has been admitted?

3           **THE COURT:** Okay.

4           (Document displayed)

5           **BY MR. ORGAN**

6           **Q.** And, unfortunately, you have to see it on the screen  
7 because I did not do as good a job anticipating as I thought I  
8 would have.

9           So if you see on your screen, can you see Exhibit 222?

10          **A.** Yes.

11          **Q.** Okay. And do you see there it says "Victor Quintero,"  
12 from him to Nancy Uhlenbrock and Jaime Salazar, and then cc'd  
13 to you? Do you see that?

14          **A.** Yes.

15          **Q.** And so that was informing you that Owen Diaz was getting a  
16 change today to an elevator -- from a -- to a shift elevator --  
17 from a shift elevator operator to a lead; correct?

18          **A.** Yes.

19          **Q.** Okay. So you now know that as of August -- as of  
20 July 31st, 2015, Owen Diaz was not a lead; correct?

21          **A.** Can you repeat the question again, please?

22          **Q.** As of July 31st, going back to Exhibit 38, we know that  
23 Owen Diaz is just an elevator operator, not a lead; correct?

24          **A.** I -- I can't remember why it was worded that way. You  
25 know, it's -- it was just identifying him, that's all.

1 Q. Okay. So, anyway, this issue is brought to your attention  
2 by Tom Kawasaki; correct?

3 A. Yes.

4 Q. Okay. And he informs you that Owen Diaz brought to his  
5 attention that comments were being made towards Mr. Diaz that  
6 were racist in nature; right?

7 A. Correct.

8 Q. And he also tells you that he was bringing Owen Diaz's  
9 complaint to your attention and the attention of Jaime Salazar;  
10 right?

11 A. Yes. Jaime Salazar was the supervisor.

12 Q. Right. But Mr. Diaz, if you look at it, it says: To  
13 attention of my supervisor Edward and Jaime.

14 So it's at least -- it's at least understood, isn't it, by  
15 you, that you have some supervisor role at this point in time?

16 A. I can't speak for him, why he wrote it that way. Okay? I  
17 received the email. I was learning the elevator processes at  
18 the time and Jaime Salazar and Victor Quintero were the  
19 supervisors, the direct supervisors, over the department.

20 Q. Okay. You do know that Mr. Kawasaki brings to your  
21 attention that we are in the process of reviewing all  
22 statements made in the situation. He told you that; right?  
23 That's in the email?

24 A. Okay. Let me look at it. Oh, this one here?

25 Q. Yeah. Yeah. No. It's in your notebook again. I'm



1     sorry. Exhibit 38.

2     **A.**     38.

3     **Q.**     Yeah. (As read):

4             "We are in the process of reviewing all statements  
5             made in this situation."

6             That's what he told you; right?

7     **A.**     Yes.

8     **Q.**     Okay. And then at this time you never conduct any kind of  
9     investigation into Owen Diaz's complaints about Judy Timbreza;  
10    correct?

11    **A.**     I was not the direct supervisor. Okay? I was working  
12    with the elevator people at that time.

13             **MR. ORGAN:** Objection. Nonresponsive.

14             **THE COURT:** The question to you was whether you had  
15    conducted any investigation into this. Did you? "Yes" or  
16    "no."

17             **THE WITNESS:** Yeah, we spoke with the employees who  
18    were on the elevator services. Okay? And from what I  
19    remember, there was really nothing directly said about these  
20    words were used or anything like that. It was just...

21    **BY MR. ORGAN**

22    **Q.**     So is it your testimony now that you did conduct some kind  
23    of investigation?

24    **A.**     We asked -- as I mentioned, we asked some of the  
25    employees: What's going on? You know -- you know, Owen is

1 hurt or whatever. I can't remember the words. And nobody had  
2 anything to say.

3 **Q.** My question is: Is it your position now that you did  
4 conduct some kind of investigation?

5 **A.** It's probably a -- it's fair to say it was a minimal  
6 investigation, I guess. Yeah.

7 **MR. ORGAN:** Your Honor, I would like to read from the  
8 deposition 155/8 to 155/16.

9 **THE COURT:** Okay. Mr. Romero, do you have your  
10 deposition in front of you?

11 **THE WITNESS:** Is that this one here?

12 **THE COURT:** Yes.

13 Take a look at the pages that Mr. Organ just described for  
14 you.

15 **THE WITNESS:** What are the pages again, sir?

16 **BY MR. ORGAN**

17 **Q.** 155, 8 to 16?

18 **A.** 155?

19 **Q.** Yep, 8 to 16.

20 **A.** Okay.

21 (Brief pause.)

22 **THE COURT:** You can proceed. Go ahead.

23 **MR. ORGAN:** Can I read it, Your Honor?

24 **THE COURT:** Yes.

1 BY MR. ORGAN

2 Q. (As read)

3 "QUESTION: And you never conducted any kind of  
4 investigation into this issue relating to Judy  
5 Timbreza using any kind of racist words or racially  
6 offensive remarks towards Owen Diaz; correct?

7 "ANSWER: I don't remember. I don't think I made that  
8 type of investigation. It was kind of -- Tom did  
9 something. Jaime did something. They were talking to  
10 these people, and we were informed that the people  
11 denied hearing those remarks."

12 Those are the answers -- that's a question that was asked  
13 of you and that was the answer you gave; correct?

14 A. That's the answer I gave, yes.

15 Q. You never interviewed Owen Diaz about Judy Timbreza, did  
16 you?

17 A. I don't remember doing that.

18 Q. Okay. In fact, you claim that you weren't even Tom  
19 Kawasaki's supervisor; correct? That's your claim, that you  
20 were not his supervisor; right?

21 A. Because at the time I was not his direct supervisor.

22 Okay?

23 Could I mention something? I think that --

24 THE COURT: Mr. Romero, if you wait for the question,  
25 you can answer the question.

1           **THE WITNESS:** Okay.

2           **THE COURT:** If the lawyers on the other side want to  
3 ask you some questions, they can do that, too.

4           **THE WITNESS:** All right.

5           **BY MR. ORGAN**

6           **Q.** And so if I have this right, Jaime Salazar, he's the  
7 supervisor over the elevators, the direct supervisor; correct?  
8 Right?

9           **A.** Yes.

10          **Q.** And Tom Kawasaki and Jaime Salazar take the lead on the  
11 investigation; correct?

12          **A.** Yes.

13          **Q.** And on August 1st you sent an email to Mr. Kawasaki that  
14 you were following up on his discussion -- on a discussion you  
15 had with Jaime Salazar, that you were following up on that on  
16 Monday. That's what you told him; right?

17          **A.** Yes.

18          **Q.** And if you look at Exhibit 37.

19               **MR. ORGAN:** I think that one was admitted, Your Honor.  
20 Yes.

21               **THE COURT:** Yes, it was.

22           **BY MR. ORGAN**

23          **Q.** If you look at Exhibit 37, that's where you say that  
24 you're following up. Do you see that?

25          **A.** Yes.

1 Q. Okay. So now Mr. Kawasaki, he meets with you on that  
2 Monday, August 3rd, right, to discuss what he has learned from  
3 talking Owen Diaz?

4 A. I don't remember that.

5 Q. Okay. You don't remember whether you met or not?

6 A. I don't remember. It's been a long time.

7 Q. I understand.

8 And Mr. Kawasaki lets you know that Owen Diaz complained  
9 about racial slurs; correct?

10 A. Yes.

11 Q. Yeah. And Mr. Kawasaki tells you that he had learned from  
12 the people who observed the altercation between Owen and  
13 Mr. Timbreza that racial slurs -- he uses this term "thrown;"  
14 that racial slurs were thrown by Mr. Timbreza. That's what he  
15 told you; right?

16 A. I don't remember the exact wording.

17 Q. Okay.

18 A. Okay.

19 Q. But that information was at least communicated to you;  
20 correct?

21 A. I -- I knew about it, yes.

22 Q. Yeah, okay.

23 A. He said -- could I mention something here in answer to  
24 this question?

25 **THE COURT:** Is it directly related to the question?

1           **THE WITNESS:** Yes.

2           **THE COURT:** Okay. Go ahead.

3       **A.** Okay. On the email you referenced here on Number 38,  
4 okay --

5       **BY MR. ORGAN:**

6       **Q.** 38?

7       **A.** Yeah. Yeah, 38.

8       **Q.** Well, I thought I had you at 37, but you want to go back  
9 to 38?

10       **A.** I thought that's the one you were referring to.

11       **Q.** I think we had moved on from that, Mr. Romero.

12           **THE COURT:** Okay. So why don't you proceed,  
13 Mr. Organ?

14       **MR. ORGAN:** Could we go? Keep --

15       **THE COURT:** Yes.

16       **MR. ORGAN:** Okay, Your Honor.

17           So then what I'd like you to do is let's look at  
18 Exhibit 39, which I believe is in evidence, Your Honor.

19       **THE COURT:** It is.

20       **BY MR. ORGAN**

21       **Q.** Now, this is your email on the 4th.

22       **MR. ORGAN:** And can we publish this one, Your Honor?

23       **THE COURT:** Yes.

24       **MR. ORGAN:** Okay.

25       (Document displayed.)

1 BY MR. ORGAN

2 Q. This is your email on the 4th; right? Exhibit 39.

3 A. Okay.

4 Q. Yeah. You sent this to Victor Quintero; correct?

5 A. I did.

6 Q. And you said to Mr. Quintero that (as read):

7 "Mr. Owen says this has happened before."

8 You had information that this type of conduct had been  
9 directed at Mr. Diaz before; correct? That's why you put that  
10 there.

11 A. I was only stating what he said.

12 Q. What Mr. Diaz said? Did you actually talk to Mr. Diaz or  
13 Mister -- you're talking about what Mr. Kawasaki told you; is  
14 that correct?

15 A. Kawasaki is the one that told me this.

16 Q. Okay.

17 A. That he said it had happened before.

18 Q. Okay. And just so we're clear, Mr. Diaz said that it had  
19 happened before; correct?

20 MS. KENNEDY: Objection. Calls for speculation.

21 THE COURT: Sustained.

22 BY MR. ORGAN

23 Q. When you say here "Mr. Owen says this has happened  
24 before," you're referring to Mr. Diaz has said that the conduct  
25 has happened before; correct?

1   **A.**   No.  I'm stating what Timbreza had told me.  Okay?  He  
2   said that Owen had said it had happened before.

3   **Q.**   I see.  Did Timbreza tell you that or did Kawasaki tell  
4   you?

5   **A.**   Kawasaki.

6   **Q.**   Okay.

7   **A.**   Am I pronouncing that right?

8   **Q.**   Yeah.  Kawasaki.

9       Okay.  Now, you wrote here (as read):

10            "They did not hear the remarks."

11       Do you see that?  Do you see where you wrote that?

12       The second sentence (as read):

13            "We investigated by speaking to all witnesses  
14       present, but they said they did not hear the remarks."

15       That's what you wrote; correct?

16   **A.**   Yes.

17   **Q.**   Now, it's safe to say by August 4th that Mr. Quintero  
18   knows that Owen Diaz has complained about racially offensive  
19   remarks; isn't that true?

20            **MS. KENNEDY:**  Objection.  Calls for speculation.

21            **THE COURT:**  Sustained.  This is not Mr. Quintero  
22   testifying.

23   **BY MR. ORGAN**

24   **Q.**   Based on your emails to Mr. Quintero and the emails that  
25   you saw from Mr. Kawasaki, you understood at that time that



1 Mr. Quintero had notice of the offensive remarks directed  
2 towards Mr. Diaz; correct?

3 A. I don't know what Mr. Quintero knew. Okay? All I can do  
4 is respond is that -- that we sent the email about what had  
5 happened at that time in -- in talking to the people who are on  
6 the elevators.

7 Q. But Victor Quintero let you know that he had at least  
8 received your email; correct?

9 A. I don't know if he let me know. If there is an email that  
10 he responded to, I need to see it. Okay?

11 Q. Well, if you go back to Exhibit 38.

12 A. Okay.

13 Q. That email was sent by Tom Kawasaki to Victor Quintero;  
14 correct?

15 A. Yes.

16 Q. So you would agree that Mr. Kawasaki had told  
17 Mr. Quintero, at least in that email, about racially offensive  
18 remarks at that point in time; correct?

19 A. Well, I'm assuming that he received the email.

20 Q. And if you look, I'd like you to look at Exhibit 41,  
21 please.

22 MR. ORGAN: Your Honor, I'd like to move Exhibit 41  
23 in. I believe this is a stipulated admissible document.

24 MS. KENNEDY: No objection, Your Honor.

25 THE COURT: All right. It's admitted.

(Trial Exhibit 41 received in evidence)

**BY MR. ORGAN**

**Q.** Okay. And Victor Quintero responds to your email and says (as read):

"Thank you. VQ."

Is that how he would sign things?

**A.** Are we looking at the same email here?

**Q.** 41, Exhibit 41?

**A.** I'm sorry. I have the previous one.

**Q.** That's okay. There are a lot of them up there.

That email from Victor came back to you; correct?

**A.** Okay. I don't know if these are mixed up here or not.

Okay?

**Q.** You what now?

**THE COURT:** Just look at Exhibit 41.

**BY MR. ORGAN**

**Q.** Exhibit 41. Just look at Exhibit 41, please.

**A.** Is that the one that's dated 8/4?

**Q.** That's the one that's dated 8/4, and it's your email from 8/4, and then Victor Quintero's email back to you on 8/4. Do you see that?

**A.** You might have to look at this because I'm not understanding it.

(Brief pause.)

**THE COURT:** It's correct. He's referring you to --

1           **THE WITNESS:** Oh, I'm sorry. Sorry about that.

2           **MR. ORGAN:** Can we publish this, Your Honor?

3           **THE COURT:** Yes. I think it was briefly.

4           **MR. ORGAN:** Is it admitted?

5           **THE COURT:** Yes.

6           (Document displayed.)

7           **BY MR. ORGAN**

8           **Q.** So Victor Quintero responded to you thanking you for  
9 keeping him informed; correct?

10          **A.** Yes.

11          **Q.** And you certainly have no basis to believe that Owen Diaz  
12 is lying about Judy Timbreza, do you?

13          **MS. KENNEDY:** Objection. Argumentative. Lack of  
14 foundation.

15          **THE COURT:** Overruled. You can answer.

16          **THE WITNESS:** Could you repeat it again, please?

17          **BY MR. ORGAN**

18          **Q.** You have no basis to believe that Owen Diaz is lying about  
19 Judy Timbreza, do you?

20          **A.** No. And I think that's why it was -- you know, attention  
21 was given to it.

22          **Q.** Now, Mr. Timbreza is issued with a verbal warning; is that  
23 correct?

24          **A.** Yes.

25          **Q.** And the verbal warning was for racial incidents; correct?

1 A. I don't remember. I think the -- I got some medication  
2 that makes me kind of thirsty, and I get kind of --

3 Q. Do you need some water? I can get you some water.

4 A. I have some water right here.

5 Q. You have some, okay.

6 A. Yeah.

7 I think that the write-up was done to nextSource, if I  
8 was correct. If I remember correctly.

9 Q. Okay.

10 Okay. But you did come to a conclusion that Judy Timbreza  
11 had not treated his fellow team members with dignity and  
12 respect. That was in there; right? You came to that  
13 conclusion?

14 A. I came to the conclusion that nobody was saying really  
15 anything about, you know, any comments that were made.

16 Q. My question is a little different, sir.

17 A. Okay.

18 Q. You came to a conclusion that Mr. Timbreza was not  
19 treating his fellow members, team members, with dignity and  
20 respect. That's your conclusion, wasn't it?

21 A. That's why he was written up.

22 Q. No. I'm asking what you came to a conclusion of.

23 A. I came to a conclusion that the information was given to  
24 their -- to my supervisors and nextSource, and that they  
25 decided what they were going to do with the write-up.

1 Q. I'd like you to go back to Exhibit 41.

2 A. Okay.

3 Q. Okay? And if you see in Exhibit 41, your write-up down at  
4 the bottom, do you see that?

5 And it says (as read):

6 "We have given Mr. Timbreza a verbal warning..."

7 Do you see that?

8 A. Uh-huh.

9 Q. (As read)

10 "... and explained his need to treat his fellow  
11 team members with dignity and respect."

12 Right?

13 A. Uh-huh.

14 Q. And the reason that you had to bring up dignity and  
15 respect is because Mr. Timbreza had used offensive racial  
16 terms; right?

17 A. No. I don't remember anybody saying any specific racial  
18 remarks that he had made. They talked about him being  
19 offensive in the way he talked and things like that; but -- and  
20 that's what -- because we had -- you know, he was -- he was a  
21 guy who was kind of just offensive in the way he did things.  
22 Okay? So he needed to be told: You can't be acting that way,  
23 you know, in your job. Okay?

24 Q. Okay. Let's talk about Ramon Martinez. You know who that  
25 is; right?

1 A. I do.

2 Q. I want to fast forward to October 17th of 2015. Okay?

3 Now, at this point in time, October 17th of 2015, you have  
4 taken over at least some of the responsibility for overseeing  
5 the elevators in this October 2015 time period; correct?

6 A. Yes.

7 Q. And you're Owen Diaz's supervisor as of this date,  
8 October 17th; correct?

9 A. Well, I can't affirm knowing the exact date that they --  
10 they hired -- I can't even remember. It was during October.  
11 Okay? And I think you alluded to that at the beginning when I  
12 got hired. Okay? I just can't remember the exact date right  
13 now. Okay?

14 Q. Okay. But you think it was at the beginning of October  
15 that you made the transition; correct?

16 A. No. It was more like towards the middle of October.

17 Q. So the middle being around October 15th; right?

18 A. I don't -- I don't remember the date. Okay?

19 Q. Okay. But you certainly played a role in investigating  
20 Owen Diaz's complaint that Ramon Martinez had threatened him in  
21 the elevator on October 17th. You did that; right?

22 A. Are you referring to a specific email? No?

23 Q. I'm just asking you for your memory. Do you remember  
24 investigating or playing a role in Owen Diaz's complaints that  
25 Ramon Martinez threatened him in the elevator on October 17th?

1 A. I don't remember. If there is an email there, then it  
2 would probably help me to remember.

3 Q. Let's go to Exhibit 235.

4 A. Okay.

5 Q. Okay. And I think this one is in. Yep.

6 So you see 235?

7 A. I do.

8 Q. That's an email from Owen Diaz; correct?

9 A. Uh-huh.

10 Q. And you received that email; right?

11 A. Well, the email has my name there.

12 Q. Yes.

13 A. Uh-huh.

14 Q. Now, there's a reference in this email about Mr. Diaz  
15 contacting Tom Kawasaki for advice. Do you remember whether  
16 you had any conversation with Tom Kawasaki about this incident  
17 between Ramon Martinez and Owen Diaz?

18 A. Okay. Let me read it through. Okay?

19 Q. Sure.

20 A. Okay.

21 (Brief pause.)

22 A. Okay.

23 Q. So at this point in time you understood that Mr. Diaz was  
24 complaining about threatening conduct towards him by Ramon  
25 Martinez; correct?

1 A. I think so.

2 Q. And my question before that was: Do you remember whether  
3 you talked to Tom Kawasaki or not in relation to this?

4 A. I don't remember.

5 Q. You have no memory of a conversation?

6 A. I don't remember, no.

7 Q. Okay. There is a -- there's a reference here that it was  
8 captured on video. Do you see that?

9 A. Yes.

10 Q. Okay. Did you look at any videotape of the interaction  
11 between Ramon Martinez and Owen Diaz?

12 A. No.

13 Q. Okay. And why didn't you look at any --

14 A. Okay.

15 Q. Why didn't you look at any videotape about an interaction  
16 between Ramon Martinez and Mr. Diaz?

17 A. Okay. I -- at that time I did not have access to videos,  
18 to even be allowed to look at any videos. If we needed to see  
19 something, I would refer it to Mr. Quintero or Jaime Salazar.

20 Q. At this point in time Ramon Martinez, he's a supervisor;  
21 correct?

22 A. Yes.

23 Q. And then initially you started to do an investigation; is  
24 that correct?

25 It's not mentioned in Exhibit 235 --



1 A. I don't remember.

2 Q. -- but I believe you did start to do an investigation.

3 A. I don't remember.

4 Q. Let me see. If you go to Exhibit 240 --

5 MR. ORGAN: And, Your Honor, this has been stipulated  
6 to. I'd like to move Exhibit 240 into evidence.

7 THE COURT: All right.

8 MS. KENNEDY: No objection.

9 THE COURT: It's admitted.

10 (Trial Exhibit 240 received in evidence)

11 BY MS. JENG:

12 Q. So if you look at Exhibit 240 -- do you have that?

13 A. 240, yes.

14 Q. It starts with Owen Diaz's complaint. If you turn to the  
15 third and fourth page of the document, you see there it starts  
16 with that complaint that we just --

17 A. Yes.

18 Q. -- we just looked at.

19 Okay. And then it looks like Wayne Jackson gets involved.  
20 Who's Wayne Jackson at this point in time?

21 A. I think he was the -- let me see if I remember the title  
22 he had. He was, like, the project manager for nextSource.

23 Q. Okay.

24 A. I might be wrong in that.

25 Q. He was like a liaison between nextSource and Tesla

1 people and the contract employees; is that right?

2 **A.** Well, I don't know exactly what his job was. I didn't  
3 hire him, but -- but I think that he was the guy in charge, the  
4 go-to guy for any issues having to do with nextSource.

5 **Q.** Okay. If you look at the top of Page 3 -- again, we're  
6 still in Exhibit 240 -- there is an email from Sherrie Garrett  
7 to Wayne Jackson that says:

8 "Why is Ed meeting with them?"

9 Okay. Do you see that?

10 **A.** Yes.

11 **Q.** And then if you go to the next page forward, so Page 2,  
12 then Wayne responds (as read):

13 "He was instructed by Victor."

14 Did Victor Quintero instruct you to conduct an  
15 investigation into the incident between Ramon Martinez and Owen  
16 Diaz?

17 **A.** I think that he -- I can't answer for him. I don't know,  
18 but he didn't -- I don't remember him telling me anything  
19 directly.

20 **Q.** Okay. So you don't have a recollection of Victor Quintero  
21 telling you to get involved?

22 **A.** I do not. Not directly.

23 **Q.** Okay. Now, if you look at this, there's an email from --  
24 let's go to the first page. There's an email from an Erin  
25 Marconi. Do you see that? About midway down the first page of

1 Exhibit 240.

2 A. I see it.

3 Q. And Erin Marconi was the HR person from Tesla that you  
4 would work with; is that correct?

5 A. Erin?

6 Q. Erin Marconi.

7 A. She was -- I know she was from personnel or something,  
8 right.

9 Q. Okay. So at least as of this point in time, as we see in  
10 the email, it looks like Erin Marconi was involved in this  
11 incident. Is that what it looks like to you?

12 A. It looks like -- I assumed it was personnel and they were  
13 going to deal with it.

14 Q. Okay. So you basically stopped investigating and let  
15 Tesla HR take over; is that right?

16 A. That's what I recall.

17 Q. Okay. And now if we go to Exhibit -- let's go to  
18 Exhibit -- let's go to Exhibit 33, please. I want to now go to  
19 another Ramon Martinez incident.

20 A. Say the number again, please.

21 Q. Exhibit 33.

22 A. Okay.

23 MR. ORGAN: And I believe Exhibit 33 is stipulated as  
24 admissible.

25 MS. KENNEDY: Yes. No objection, Your Honor.

1           **THE COURT:** Okay. It's admitted.

2           (Trial Exhibit 33 received in evidence)

3           **MR. ORGAN:** Okay. And may we publish this,  
4 Your Honor?

5           **THE COURT:** You may.

6           **MR. ORGAN:** Okay.

7           (Document displayed.)

8           **BY MR. ORGAN**

9           **Q.** So Exhibit 33 is a three-page document. Do you remember  
10 receiving this?

11          **A.** I did get the email, I think, yeah, because it's got my  
12 name on it.

13          **Q.** Right. And do you remember seeing the pictures? Do you  
14 see the two pictures that are attached here?

15          **A.** I only remember seeing one of the pictures --

16          **Q.** Okay.

17          **A.** -- which is --

18          **Q.** Which one?

19          **A.** This one here.

20          **Q.** The close-up?

21          **A.** Yes.

22          **Q.** Okay. Do you think that somehow the email you received  
23 didn't include the other one?

24          **A.** I don't remember. But going by memory, I don't remember  
25 seeing the other -- the other picture.

1 Q. Okay. So let's go back to the first page, Mr. Diaz's  
2 complaint.

3 At this point in time you are Owen Diaz's supervisor,  
4 direct supervisor, as of that date, January 21st, 2016;  
5 correct?

6 A. Yes.

7 Q. And you understood that Mr. Diaz was classifying the  
8 drawing -- if you can just quickly go to the second page,  
9 Mr. Diaz was classifying this drawing as racist in nature;  
10 correct?

11 A. According to his email, that's what it sounds like, yeah.

12 Q. Okay. And after Mr. Diaz texted or sent you this  
13 complaint about Ramon Martinez, you and he had a phone call  
14 about his concerns; correct?

15 A. With Owen?

16 Q. Yeah.

17 A. I don't remember having a phone call, but it could have  
18 been that I had had a phone call.

19 Q. Okay. Did you ever have a conversation with Ramon  
20 Martinez to find out what he was intending when he drew that?

21 A. No.

22 Q. And in terms of what Mr. Diaz did in sending you  
23 Exhibit 33, that was all he was supposed to do under Tesla's  
24 reporting policies; correct?

25 A. I didn't understand the question.

1 Q. Yeah. In terms of -- every employee who works at Tesla is  
2 supposed to report racist conduct if they see it; correct?

3 A. Well, I can't speak for Tesla in the sense that I don't  
4 know, you know, how they got all this out to everybody. Okay?  
5 But in all the meetings -- and I was fairly new with the  
6 company at the time. Okay?

7 So, but in our meetings with supervisors and other  
8 managers and so on, they would always bring up about that we  
9 wanted to instill in everybody to be respectful to one another,  
10 to treat everybody with respect, and those types of things.  
11 Okay?

12 Q. Right.

13 A. I can't -- I can't remember that they said specifically  
14 anything about racist remarks; but -- but as a professional,  
15 you always know that there are some things that people are just  
16 not supposed to do.

17 Q. But you would agree that sending someone this picture,  
18 this picaninny, that's not showing respect; correct?

19 A. I -- I didn't look at it as being respectful. It was not  
20 respectful.

21 Q. Right. And now after you received Mr. Diaz's complaint in  
22 Exhibit 33, you had a meeting with your manager, Victor  
23 Quintero, and also with Wayne Jackson from nextSource, the  
24 three of you; correct?

25 A. Yes, yes.

1 Q. Okay. And you discussed the fact that Owen Diaz was upset  
2 by what had happened towards him; correct?

3 A. Yes.

4 Q. Okay. And you knew as of that time that Owen Diaz felt as  
5 if he -- that the conduct towards him by Ramon Martinez was  
6 getting worse; correct? You knew that?

7 A. I don't remember any remarks being made about that, about  
8 things getting worse. Okay? I was just -- if you're referring  
9 to this email, he brought up -- he brought up --

10 Q. Yeah.

11 A. -- you know, the points -- you know, how his feelings  
12 were. And then what I did is I reported it to Quintero. Okay?

13 Q. Right. But in his email, if you look down near the  
14 bottom, it says (as read):

15 "And because nothing has been done, it seems that  
16 his behavior is getting worse."

17 That's something you knew as of January 22nd, 2016, when  
18 you got it; right?

19 A. Well, I got -- I got what he said --

20 Q. Yes.

21 A. -- yes.

22 Q. And you didn't talk to Ramon, so you don't know what he  
23 thought; right?

24 A. He was not my employee. I reported it to his supervisor.

25 Q. Did you have any further involvement in investigating this

1 drawing, this racist effigy and drawing? Did you have any  
2 further role in investigating that once you brought it to  
3 Victor Quintero's attention?

4 **A.** No.

5 **Q.** Okay. Now let's turn to Owen Diaz's promotion. He was  
6 promoted to a lead elevator operator, correct, in August of  
7 2015?

8 **A.** When I started working the elevator service, I was  
9 informed that he was a lead. I don't know what date he got the  
10 promotion or anything else.

11 **Q.** Okay. If you -- in terms of Owen Diaz's performance on at  
12 least -- you're aware that on at least one occasion, Owen Diaz  
13 had to man the elevators by himself; correct? You're aware of  
14 that?

15 **A.** That would happen periodically with all the leads.

16 **Q.** Okay. And now it's your position that you never received  
17 any information that Owen Diaz was a good supervisor; is that  
18 correct?

19 **A.** Are you asking me if I ever heard that he was a good  
20 supervisor?

21 **Q.** Yeah. Did anyone ever tell you: Owen Diaz is a great  
22 supervisor? Did anybody inform you of that?

23 **A.** I had -- I had heard comments that, you know, he -- he was  
24 good, and there are other times that he had problems, and that  
25 he was good and, you know, back and forth; but I had no reason



1 to doubt that he was a bad supervisor.

2 Q. Okay. Okay. So you never came to a conclusion that Owen  
3 Diaz was a bad supervisor. You heard mixed things; is that  
4 fair?

5 A. Correct.

6 Q. Okay. Let me ask you a couple questions about the freight  
7 elevators. There are two main freight elevators at the  
8 factory; is that right?

9 A. Yes.

10 Q. And that's how you move goods up and down; is that right?

11 A. Yes.

12 Q. Without the elevators, you couldn't build the cars;  
13 correct?

14 A. It would be pretty hard.

15 Q. Okay. Now, we saw earlier the complaint to Owen Diaz  
16 where he complained to you about the racial conduct in  
17 Exhibit 38, the Judy Timbreza stuff. Do you remember that?  
18 Exhibit 38?

19 So isn't it true that Owen Diaz, he actually complained to  
20 you about use of the "N" word at the factory; correct?

21 A. No.

22 Q. Didn't Mr. Diaz complain to you about Robert Hurtado using  
23 the "N" word towards him?

24 A. I don't -- I don't remember that.

25 Q. Okay. Did Mr. Diaz complain to you about Ramon Martinez

1 using the "N" word?

2 A. I don't recall him doing that.

3 Q. You received a complaint about use of the "N" word by  
4 Lamar Patterson, didn't you?

5 A. I remember the name and I remember him, but I don't  
6 remember him -- if he did, I don't remember at this moment.

7 Q. Isn't it true that you claim that you never heard the  
8 "N" word at the factory? That's what you claim; correct?

9 A. I claim that at the factory it was never used or that I  
10 never heard it?

11 Q. That you never heard it at the factory, that you were  
12 never aware of it at the factory.

13 A. Are you asking if I heard it directly from someone?

14 Q. I'll ask you that question first. Did you ever hear the  
15 "N" word directly from someone?

16 A. I don't recall ever hearing anybody, not in my presence.

17 Q. Isn't it true, though, that you did hear that -- you did  
18 hear about "N" word complaints; correct? Someone complained to  
19 you about the "N" word; right?

20 A. I don't remember anybody coming directly about that, not  
21 offhand.

22 **THE WITNESS:** Your Honor, could I answer in how I  
23 would know of sometimes that, you know, things would come up,  
24 like in the restrooms? I was a part of the janitorial service.

1 BY MR. ORGAN

2 Q. So you did see some racist graffiti in the restrooms?

3 A. I never saw directly, but our people would be cleaning,  
4 and they were instructed that if you see something, take a  
5 picture it and -- and -- and send it to -- oh, my goodness.

6 Q. Andres Donet?

7 A. Send to it personnel.

8 Q. Okay. And so that did happen? There was racist graffiti  
9 in the bathrooms; correct?

10 A. I never saw it and it was never said that it was racist.  
11 I was just anything offensive, they were instructed just to  
12 take a picture of it and send it in.

13 Q. Okay. Did you ever see any of the pictures?

14 A. I don't remember specifically seeing anything like that.  
15 Okay?

16 Q. But you do know that graffiti did exist in the bathrooms  
17 at the factory?

18 A. Periodically, yes.

19 Q. Okay. And it's true that you contend that no one ever  
20 brought to your attention use of the "N" word? That's what you  
21 contend; right?

22 A. That's -- I'm telling you I don't remember anybody telling  
23 me that.

24 Q. Isn't it true, sir, that you -- someone actually directly  
25 complained to you about the "N" word? That's what happened

1 contrary to what you just said. Isn't it true that you  
2 received a complaint about the "N" word?

3 **A.** I can't recall getting a complaint like that.

4 **Q.** I'd like to turn your attention to Exhibit 106.

5 (Witness complied.)

6 **A.** Okay.

7 **Q.** If you look at the bottom, there is an email from you.  
8 There's an email from you --

9 **MS. KENNEDY:** Objection, Your Honor. This is going  
10 into the Motion in Limine.

11 **MR. ORGAN:** This is what I mentioned this morning,  
12 Your Honor.

13 **THE COURT:** The objection is overruled. You can  
14 proceed.

15 **BY MR. ORGAN**

16 **Q.** You wrote this email down at the bottom, didn't you, to  
17 Wayne Jackson?

18 **A.** Okay.

19 **Q.** Right?

20 **A.** Yes. And your question to me was if I recall. I didn't  
21 recall at the moment. I didn't recall that at all. It's been  
22 many years.

23 **Q.** Well, does this refresh your recollection that, in fact,  
24 you did receive a complaint about the "N" word from elevator  
25 staff other than Mr. Diaz?

1     **A.**   Well, is there?

2     **Q.**   Yes. And that is copied to Victor Quintero; correct?

3     **A.**   And Wayne Jackson and Victor Quintero.

4     **Q.**   And Erin Marconi from Tesla HR; correct?

5     **A.**   Yes.

6     **Q.**   Okay.

7             **MR. ORGAN:** Your Honor, I would move Exhibit 106 into  
8 evidence.

9             **MS. KENNEDY:** Same objections, Your Honor. Relevance  
10 and me-too.

11            **THE COURT:** I think a satisfactory basis has been  
12 laid. I'm going to admit Exhibit 106, but only for the purpose  
13 for your assessment of credibility of Mr. Romero and the  
14 testimony regarding the use of the "N" word and not for any  
15 other purpose.

16            (Trial Exhibit 106 received in evidence)

17     **BY MR. ORGAN**

18     **Q.**   And isn't it true, sir --

19            **THE COURT:** Do you want to publish it then?

20            **MR. ORGAN:** Oh, yes, Your Honor. I would like to  
21 publish it. Thank you.

22            (Document displayed.)

23     **BY MR. ORGAN**

24     **Q.**   So this is an interaction between a Javier Temores and  
25 Troy Dennis. These were two people who were working on the

1 elevators; correct?

2 A. Yes.

3 Q. And one of them called the other the "N" word; correct?

4 A. According to the email. I don't remember the  
5 circumstances at the time but, yes.

6 Q. And as a result of this -- as a result of this, did you  
7 fire Troy Dennis?

8 A. I don't remember.

9 Q. Isn't it true, sir, that he stayed employed? Troy Dennis  
10 stayed employed after using the "N" word in the elevators;  
11 correct?

12 A. I think so, yes. I'd like to --

13 Q. I would like to turn your attention to --

14 A. -- state that the emails were sent to the people  
15 authorized to handle the problem.

16 Q. Right. You would have expected Erin Marconi from human  
17 resources to have done something about it; right?

18 A. I would have expected them to do what they needed to do.

19 Q. And Victor Quintero, the manager of the whole department,  
20 you would have expected him to do something about it; right?

21 THE COURT: Now you've gone way beyond the scope of  
22 this document.

23 MR. ORGAN: I would like to move on to Exhibit 109.

24 BY MR. ORGAN

25 Q. This isn't the only "N" word incident that you knew about;

1 correct, sir? Look at Exhibit 109.

2 **A.** Okay.

3 **MS. KENNEDY:** Your Honor, this is also going beyond  
4 the scope of the Motion in Limine and it's past the time that  
5 Mr. Diaz was even at the Tesla facility.

6 This is now going past the Motion in Limine and this is  
7 the slippery slope that we've been talking about.

8 **MR. ORGAN:** It's for the same purpose, Your Honor.

9 **THE COURT:** You've already established that purpose.  
10 What's the timing of this? Are we looking at --

11 **MR. ORGAN:** It's April of 2016.

12 **THE COURT:** Okay. So that is beyond the scope.

13 **MR. ORGAN:** Okay. No further questions, Your Honor.

14 **THE COURT:** All right.

15 Ms. Kennedy, we are at 1:30. It depends on how much time  
16 you think your redirect is going to take. If it's ten minutes  
17 or less --

18 **MS. KENNEDY:** No, no.

19 **THE COURT:** Okay.

20 **MS. KENNEDY:** Unfortunately, it's not ten minutes or  
21 less.

22 **THE COURT:** All right. So, ladies and gentlemen, we  
23 will break for the day.

24 Remember two things. One is, this is just the beginning  
25 of the case. There is a lot of information that you're going

1 to be receiving over the course of this week and maybe next  
2 Monday, and it's just very important that you keep an open mind  
3 about everything.

4 Don't discuss what has happened so far. Don't communicate  
5 about it with anybody. Just remember that long instruction  
6 that I gave you earlier because there's a lot to come in this  
7 case.

8 The second thing is, really try to be on time. Really try  
9 to be here at 8:15. We have a lot of work that we have to do  
10 to get this case to you. And I want to keep to the promise  
11 that I made to you, which is that I think everything will be  
12 done by a week from today and the case will go to you, but that  
13 will only happen if we're all doing our part, and so the big  
14 part -- a big part is being here on time. So please come --  
15 plan on being here by 8:15 so that we don't have any problems.

16 Okay? So you are now dismissed for today, and I'll see  
17 you tomorrow morning.

18 (Proceedings were heard out of presence of the jury:)

19 **THE COURT:** Mr. Romero, you can step down, but I would  
20 like everybody else to sit down.

21 (Witness steps down.)

22 **THE COURT:** And I want to remind you that once a  
23 witness takes the stand, there is no substantive conversation  
24 that should go on with that witness. So during this break,  
25 besides timing and pleasantries, don't communicate with



PROCEEDINGS

1 Mr. Romero. And that will be the rule of the case.

2 All right. Have a good afternoon everybody.

3 (Whereupon at 1:30 further proceedings

4 were adjourned until Tuesday, September 28, 2021

5 at 8:00 a.m.)

I N D E X

Monday, September 27, 2021 - Volume 1

	<u>PAGE</u>	<u>VOL.</u>
Preliminary Jury Instructions	10	1
Opening Statement by Mr. Alexander	22	1
Opening Statement by Ms. Kennedy	44	1
- - -		

PLAINTIFF'S WITNESSESKAWASAKI, TAMOTSU EDWEEN

	<u>PAGE</u>	<u>VOL.</u>
(SWORN)	65	1
Direct Examination by Mr. Organ	66	1
Cross-Examination by Ms. Jeng	100	1
Redirect Examination by Mr. Organ	123	1

ROMERO, EDWARD

	<u>PAGE</u>	<u>VOL.</u>
(SWORN)	128	1
Direct Examination by Mr. Organ	129	1
- - -		

E X H I B I T STRIAL EXHIBITS

	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
33		156	1
37		83	1
38		78	1
39		86	1
40		85	1
41		146	1
104		93	1
106		165	1

I N D E XE X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
202		75	1
222		91	1
235		95	1
235		118	1
240		153	1
366		72	1

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Debra L. Pas*

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Debra L. Pas, CSR 11916, CRR, RMR, RPR

Monday, September 27, 2021